



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, मंगलवार, 7 दिसम्बर, 2010/16 अग्रहायण, 1932

हिमाचल प्रदेश सरकार

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

NOTIFICATION

Shimla, the 30th November, 2010

No. HPERC/610/2010.—The Himachal Pradesh Electricity Regulatory Commission, Shimla, in exercise of the powers conferred by section 181 read with sub-section (5) of section 42 of Electricity Act, 2003 (36 of 2003) and section 21 of the General Clauses Act, 1897 (10 of 1897) and all other powers enabling it in this behalf and after previous publication, hereby makes the following regulations to amend the Himachal Pradesh Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) Regulations, 2003, published in Rajpatra, Himachal Pradesh, (Extra-ordinary) dated 24th October, 2003, namely :—

REGULATIONS

1. Short title, extent and commencement.—(1) These regulations shall be called the Himachal Pradesh Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of Consumers) (Eighth Amendment) Regulations, 2010.

(2) These regulations shall come into force on the date of their publication in the Rajpatra, Himachal Pradesh.

2. Amendment of regulation 2.—In regulation 2 of the Himachal Pradesh Electricity Regulation Commission (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) Regulations, 2003 (hereinafter called “the said regulations”), the following clause (20) shall be inserted, namely:—

“(20) officers of the licensee” means, any person who is appointed by the distribution licensee either on full time or part time basis for managing the affairs of the licensee and/or carrying out any function under the provisions of the Act for which the licensee pays him salary or wages or honorarium or sitting fee or remuneration in any other form.”

3. Amendment of regulation 3.—In regulation 3 of the said regulations—

(i) for sub-regulation (3), the following sub-regulation shall be substituted, namely:—

“(3) the head office of the Forum shall be preferably at the headquarters of the distribution licensee. The Forum may with the overall objective of ensuring that the complaints/grievances are heard and disposed off expeditiously, conduct its sittings at such other places, within its area of jurisdiction, as may be considered necessary and proper by it.”

(ii) in sub-regulation (4) for the words “to be appointed”, the words and the sign “comma”, “to be appointed, after prior approval of the Commission”, shall be substituted;

(iii) after sub-regulation (4) so amended, the following new sub-regulation (4-a) shall be inserted, namely:—

“(4-a) To obtain the prior approval under sub-regulation (4) of this regulation, the licensee shall make a submission to the Commission of the proposed appointment of the Members or the Chairman, as the case may be, giving details of their qualifications, field work, core expertise and past experience and the Commission will accord its approval as to suitably qualified persons to ensure that the appointment of the proposed person would meet the requirements of the regulations.”;

(iv) for sub-regulation (7) the following sub-regulation shall be substituted, namely:—

“(7)The Member of the Forum appointed under clause (b) of subregulation (4) alongwith one more Member shall form the quorum for the Forum’s meeting.”

4. Amendment of regulation 7.—In regulation 7, for sub-regulation (3) the following sub-regulation shall be substituted, namely:—

“(3) The names, designations of the Members and the concerned officers of the Forum, the addresses, e-mail, facsimile and phone numbers of the Forum and the Members shall be displayed at all the offices of the distribution licensee and shall also be duly publicized by the distribution licensee in the media.”

5. Amendment of regulation 8.—For item (3) of the regulation 8 of the said regulations, the following item (3) shall be substituted namely:—

“(3) accidents and inquiries as specified under section 161 of the Act, unless prescribed by the State Govt; by general/special order,”

6. Amendment of regulation 9.—In regulation 9 of the said regulations:—

- (a) in sub-regulation (1) for the word “must” the word “shall”, and for the sign “.” occurring at the end, the sign “:”, shall be substituted; and after sub-regulation (1) so amended, the following proviso shall be added, namely:—

“Provided that where the complainant of domestic category sends a complaint through a simple representation (not on the prescribed format), the same shall be sent for redressal to the licensee and if no response is received from the licensee within one month, it shall be treated *suo moto* as the petition to be dealt in the same manner as other petitions.” ; and

- (b) after sub-regulation (2), the following sub-regulation (3) shall be inserted, namely:

“(3) The distribution licensee shall not be permitted to appear by a counsel, attorney or advocate, but where the consumer chooses to appear by counsel, attorney or advocate, then the distribution licensee shall be granted the similar privilege.”

7. Amendment of regulation 12.—In regulation 12, after sub-regulation (3) the following proviso shall be added, namely:—

“Provided that where a Member hearing the matter does not agree with the decision taken by the Members, he may record his note of dissent with reasons, but the decision taken by majority of Members hearing the case will prevail.”.

8. Insertion of regulation 14-A.—After regulation 14, the following new regulation (14-A) shall be inserted, namely:—

“14-A—**Compliance of orders and directions:** If the distribution licensee fails to comply with the any order or direction given under these regulations, shall be deemed to have contravened these regulations and shall be liable for appropriate action against it under section 142 and 146 read with section 149 of the Act.”

9. Substitution of regulation.—For regulation 18 of the said regulations, the following regulation shall be substituted, namely:—

“18. Submission of reports: (1) The Forum shall submit a report, to the Commission on the category-wise number of complaints received, redressed and pending, within 15 days of the end of the quarters of the calendar year, in Form-2.

(2) The Forum shall also furnish, to the Commission by 31st March every year, a report containing a general review of the activities of their office during the preceding financial year and shall also furnish such information as the Commission may require.”

(3) The reports under sub-regulation (1) and (2) shall also be forwarded to the distribution licensee and the Electricity Ombudsman.

10. Addition of new regulation 19.—After regulation 18 of the said regulations, the following new regulation 19 shall be added, namely:—

“19. Inspection of records and supply of certified copies: - The aggrieved person and the distribution licensee shall be entitled to inspect the records and to obtain certified copies of

the orders, decisions, directions given by the Forum in respect of a Grievance/Complaint, subject to payment of fees and complying with other terms, which the Forum may direct.”

By order of the Commission,
Sd/-
Secretary.

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

NOTIFICATION

Shimla, the 30th November, 2010

No. HPERC/609B/2010.- In exercise of the powers conferred by sub-sections (6) and (7) of section 42 and section 181 of the Electricity Act, 2003 (36 of 2003) read with section 21 of the General Clauses Act, 1897 (10 of 1897) and all other powers enabling it in this behalf, the Himachal Pradesh Electricity Regulatory Commission, after previous publications, hereby makes the following regulations further to amend the Himachal Pradesh Electricity Regulatory Commission (Electricity Ombudsman) Regulations, 2004, published in the Rajpatra, Himachal Pradesh (Extraordinary), dated 5th April, 2004:—

REGULATIONS

1. Short title, commencement and extent.—(1) These regulations shall be called the Himachal Pradesh Electricity Regulatory Commission (Electricity Ombudsman) (Fifth Amendment) Regulations, 2010.

(2) These regulations shall come into force on the date of their publication in the Rajpatra, Himachal Pradesh.

2. Amendment of regulation 3.—For sub-regulation (5) of regulation 3 of the Himachal Pradesh Electricity Regulatory Commission (Electricity Ombudsman) Regulations, 2004 (hereinafter called “the said regulations”), the following subregulation shall be substituted, namely:—

“(5) The salary, allowances payable to and all other terms and conditions of the appointment of the Electricity Ombudsman will be such as may be determined by the Commission from time to time and shall be paid out of the Fund constituted under section 103 of the Act:

“Provided that the remuneration and other allowances payable to the Electricity Ombudsman shall be borne by the distribution licensee in such proportion and in such manner as may be determined by the Commission and shall be allowed as the pass through expense in the Annual Revenue Requirement (ARR) of the distribution licensee.”

3. Substitution of regulation 6.—“For regulation (6) of the said regulations, the following regulation shall be substituted, namely.—

“6. **Secretariat.**—(1) The Electricity Ombudsman shall be provided with a Secretariat.

(2) The expenses of the Secretariat shall be paid out of the Fund constituted under section 103 of the Act.

Provided that the expenses of the Secretariat of the Electricity Ombudsman, including all salaries, honorarium and allowances payable to the Electricity Ombudsman and his staff shall be borne by the distribution licensee in such proportion and in such manner as may be determined by the Commission; and shall be allowed as pass through expense in the Annual Revenue Requirement (ARR) of the distribution licensee.”

4. Amendment of regulation 13.—After sub-regulation (2) of regulation 13 of the said regulations, the following sub-regulation (3) shall be inserted, namely:—

“(3) Whosoever fails to comply with any order or direction given under these regulations shall be deemed to have contravened these regulations and shall be liable for appropriate action against him under sections 142 and 146 read with section 149 of the Act”.

5. Insertion of regulation 13-A.—After regulation 13 of the said regulations, the following new regulation 13-A shall be inserted, namely:—

“13-A Consumer Awareness.—With a view to protect the consumers of electricity by creating an awareness regarding the rights available and the service as well as the level of quality that a consumer may reasonably expect from the distribution licensee, the Electricity Ombudsman shall, in collaboration with the distribution licensee,—

- (a) organise camps for consumer education and empowerment;
- (b) bring out leaflets highlighting the consumer’s rights;
- (c) develop and submit to the Commission for approval, a consumer rights statement, explaining to the consumers their rights as consumers served by the licensees within his jurisdiction; and
- (d) suggest the revision of the complaint handling procedure, prepared under section 42 of the Act, and of the Consumer Rights Statement prepared by the distribution licensee under regulation 18 of the Himachal Pradesh Electricity Regulatory Commission (General Conditions of Distribution Licensee) Regulations 2004.”

6. Insertion of new regulations 15-A and 15-B.—After regulations 15 of the said regulations the following new regulations 15-A and 15-B shall be inserted, namely:—

“15-A distribution licensee’s duty to publicise these regulations.—(1) The distribution licensee shall ensure that these regulations and the name and address, email, fax and phone numbers of the Ombudsman to whom the complaints/representations for non-redressal of grievances are to be made by the aggrieved person are displayed in his offices/premises in such a manner and at such place, so that it is put to the notice of common public visiting in respective office/premises.

(2) The distribution licensee shall ensure that a copy of these regulations is made available with the designated offices of the distribution licensee for perusal in his office premises, if any one desires to do so, and common notice to such effect about the availability of the regulations with such designated offices is displaced alongwith the notice to be displaced by him as per sub-regulation (1).

15-B. Inspection of records and supply of certified copies.—The aggrieved person and the distribution licensee shall be entitled to inspect the record and to obtain certified copies of the orders, decisions, directions given by the Ombudsman in respect of a grievances/complaints subject to the payment of fees and complying with other terms which the Ombudsman may direct.”

By order of Commission,
Sd/-
Secretary.

In the Court of Shri Y.P.S. Verma, HAS, Sub-Divisional Officer (Civil) exercising the powers of Collector, Sub-Division, Bhoranj, District Hamirpur (H.P.)

Case No. 132/2007.

Date of Institution 15-12-2007.

Date of hearing 14-12-2010.

1. Suresh Kumar s/o Shri Proja
2. Sant Ram s/o Shri Proja
both r/o Village Dhirar, Tappa Mewa, Tehsil Bhoranj, District Hamirpur (H.P.)

...Appellants.

Versus

Shri Bhagat Ram s/o Shri Heera & Others, r/o Village Dhirar, Tappa Mewa, Tehsil Bhoranj, Distt. Hamirpur (H.P.)

...Respondent.

Appeal under Section 14 of H.P. Land Revenue Act, against the order dated 4-10-2004 of Assistant Collector 1st Grade, Bhoranj in Partition case No. 101/2003 titled as Suresh Kumar and another Vs Bhagat Ram etc.

Whereas it has been proved to the satisfaction of this court that the above noted appellant (Sant Ram) cannot be served in the ordinary way of service. Hence this proclamation under Order 5, Rule 20, CPC is hereby issued against him and he is directed to appear personally or through his counsel on 14-12-2010 at 10.00 A.M. in this court, failing which *ex-parte* proceedings shall be taken against him.

Given under my hand and seal of the court on the 23rd November, 2010.

Sd/-
Collector,
Sub-Division, Bhoranj,
Distt. Hamirpur (H.P.).

In the Court of Shri Y.P.S. Verma, HAS, Sub-Divisional Officer (Civil) exercising the powers of Collector, Sub-Division, Bhoranj, District Hamirpur (H.P.)

Case No. 137/2007.
138/2007.

Date of Institution 15-12-2007.

Date of hearing 14-12-2010.

1. Suresh Kumar s/o Shri Proja
2. Sant Ram s/o Shri Proja
both r/o Village Dhirar, Tappa Mewa, Tehsil Bhoranj, District Hamirpur (H.P.)

...Appellants.

Versus

Smt. Mehanti Devi s/o Heera & others, r/o Village Dhirar, Tappa Mewa, Tehsil Bhoranj, Distt. Hamirpur (H.P.)

...Respondent.

Appeal under Section 14 of H.P. Land Revenue Act, against the order dated 4-10-2004 of Assistant Collector 1st Grade, Bhoranj in Partition case No. 99/2003, 100/2003 titled as Suresh Kumar and another Vs Bhagat Ram etc.

Whereas it has been proved to the satisfaction of this court that the above noted appellant (Sant Ram) cannot be served in the ordinary way of service. Hence this proclamation under Order 5 Rule 20, CPC is hereby issued against him and he is directed to appear personally or through his counsel on 14-12-2010 at 10.00 A.M. in this court, failing which *ex-parte* proceedings shall be taken against him..

Given under my hand and seal of the court on the 23rd November, 2010.

Sd/-
Collector,
Sub-Division, Bhoranj,
Distt. Hamirpur (H.P.).

**In the Court of Shri Pankaj Rai, HPAS, Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Shri Ashwani Kumar, aged 28 years, s/o Shri Prabhat Chand Jamwal, r/o VPO Chowki Jamwalan, Tehsil & District Hamirpur (H. P.).
2. Swati Thakur, aged 22 years, d/o Shri Gian Chand Thakur, r/o Village Brahamni, P. O. Tehsil & District Hamirpur (H. P.) . . Applicants.

Versus

General public

Subject.—Proclamation for the registration of Marriage under Section 16 of Special Marriage Act, 1954.

Shri Ashwani Kumar & Swati Thakur have filed an application alongwith affidavits in the court of undersigned under section 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 30-04-2006 at V&PO Chowki Jamwalan, Tehsil & Distt. Hamirpur and they are living as husband and wife since then, hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 20-12-2010. The objection received after 20-12-2010 will not entertained and marriage will be registered accordingly.

Issued today on 18-11-2010 under my hand and seal of the court.

Seal.

PANKAJ RAI,
Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).

**In the Court of Shri Pankaj Rai, HPAS, Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Shri Naresh Kumar, aged 31 years, s/o late Shri Jagdish Chand, r/o Village Bhatlamber, P.O. Bajrol, Tehsil Sujanpur, District Hamirpur (H. P.).
2. Salma, aged 22 years, d/o Shri Beli Ram, r/o Village Farog, P.O. Pujarli, Tehsil Rohru, District Shimla (H. P.) . . Applicants.

Versus

General public

Subject.—Notice of the Intended Marriage.

Shri Naresh Kumar & Salma have filed an application alongwith affidavits in the court of undersigned under Special Marriage Act, 1954 in which they stated they intend to solemnize marriage within three months.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 28-12-2010. The objection received after 28-12-2010 will not entertained and marriage will be registered accordingly.

Issued today on 23-11-2010 under my hand and seal of the court.

Seal.

PANKAJ RAI,
*Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).*

**In the Court of Shri Pankaj Rai, HPAS, Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Shri Ravi Kumar, aged 27 years, s/o Shri Bhag Singh, r/o Village Chaun, P.O. Barara, Tehsil Bhoranj, District Hamirpur (H. P.).
2. Meena Devi, aged 18 years, d/o Shri Raj Kumar *alias* Raj Mal, r/o VPO Kakriar, Tehsil & District Hamirpur (H. P.) . . *Applicants.*

Versus

General public

Subject.—Notice of the Intended Marriage.

Shri Ravi Kumar & Meena Devi have filed an application alongwith affidavits in the court of undersigned under Special Marriage Act, 1954 in which they stated they intend to solemnize marriage within three months.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 28-12-2010. The objection received after 28-12-2010 will not entertained and marriage will be registered accordingly.

Issued today on 23-11-2010 under my hand and seal of the court.

Seal.

PANKAJ RAI,
*Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).*

**In the Court of Shri Pankaj Rai, HPAS, Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Anwar Deen, aged 34 years, s/o Shri Latif Deen, r/o Village & P.O. Saslehra, Tehsil Jhandutta, District Bilaspur (H. P.).
 2. Sangeeta, aged 32 years, d/o Shri Subhash Chand, r/o House No. 102, Mohalla Gula, Village Gula, P.S. Mirganj, Distt. Bareilly (U.P.). At present both are residing in the House of Shri Amit Kumar Dogra, s/o Shri Satish Dogra, Ward No. 4, House No. 35 Hamirpur (H.P.)
- . . Applicants.

Versus

General public

Subject.—Proclamation for the registration of Marriage under Section 16 of Special Marriage Act, 1954.

Anwar Deen & Sangeeta have filed an application alongwith affidavits in the court of undersigned under section 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 23-04-2010 at Gasota Temple, Tehsil & Distt. Hamirpur and they are living as husband and wife since then, hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 27-12-2010. The objection received after 27-12-2010 will not entertained and marriage will be registered accordingly.

Issued today on 23-11-2010 under my hand and seal of the court.

Seal.

PANKAJ RAI,
*Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).*

ब अदालत नायब तहसीलदार एवम् कार्यकारी दण्डाधिकारी, सुजानपुर, तहसील सुजानपुर, जिला हमीरपुर
हिमाचल प्रदेश

श्रीमती व्यासां देवी वेवा श्री बेली राम, वासी तपालधार, डा0 खनौहली, तहसील सुजानपुर, जिला
हमीरपुर, हिमाचल प्रदेश

...प्रार्थी

बनाम

आम जनता

विषय.—प्रार्थना—पत्र बराये जन्म मृत्यु अधिनियम, 1969 (13)(3) अन्तर्गत श्री बेली राम की मृत्यु पंजीकरण बारे।

प्रार्थी ने इस अदालत में शपथ पत्र सहित आवेदन किया है कि उसके पति बेली राम पुत्र श्री खड़कू राम, टीका तपालधार, की मृत्यु दिनांक 6-12-1950 को वाक्या टीका तपालधार में हुई थी। परन्तु गलती से हम इसका मृत्यु का पंजीकरण ग्राम पंचायत खनौली के रिकार्ड में दर्ज न करवा सके। अब करवाना चाहते हैं।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि अगर किसी को उपरोक्त प्रार्थिन के पति की मृत्यु को दर्ज करने बारे कोई आपत्ति या ऐतराज हो तो वह दिनांक 27-12-2010 को इस अदालत में उपस्थित आकर अपना ऐतराज पेश कर सकता है अन्यथा गैर हाजरी की सूरत में एकतरफा कार्यवाही अमल में लाई जायेगी और आदेश पारित कर दिए जाएंगे।

आज दिनांक 24-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
तहसील सुजानपुर, जिला हमीरपुर, हिमाचल प्रदेश।

न्यायालय सहायक समाहर्ता प्रथम श्रेणी, सुजानपुर, तहसील सुजानपुर, जिला हमीरपुर (हि0 प्र0)

अतुल सूद पुत्र श्री किशोरी लाल, टीका वार्ड नम्बर 8, सुजानपुर, तहसील सुजानपुर (हि0 प्र0)

...प्रार्थी।

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13 (3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969.

अतुल सूद पुत्र श्री किशोरी लाल, टीका वार्ड नम्बर 8, सुजानपुर ने दिनांक 4-10-2010 को इस अदालत में एक प्रार्थना पत्र व दो हल्फिया ब्यानों सहित इस अदालत में गुजार रखा है कि उसकी दादी सोमां देवी विधवा ठाकुर दास, की मृत्यु टीका सुजानपुर में दिनांक 26-7-1984 को हो चुकी है। परन्तु अज्ञानतावश यह इसकी मृत्यु का पंजीकरण नगर पंचायत सुजानपुर के रिकार्ड में दर्ज न करवा सके।

अतः इस मुस्त्री मुनादी द्वारा आम जनता को सूचित किया जाता है कि अगर किसी व्यक्ति को उपरोक्त सोमां देवी की मृत्यु को नगर पंचायत सुजानपुर में दर्ज करने बारे कोई उजर या ऐतराज हो तो वह दिनांक 1-1-2011 को सुबह 10 बजे असालतन या वकालतन इस अदालत में हाजिर आकर अपना ऐतराज पेश कर सकता है। अन्यथा गैर हाजरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 23-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता प्रथम श्रेणी,
तहसील सुजानपुर, जिला हमीरपुर, हिमाचल प्रदेश।

**In the Court of Shri Pankaj Rai, HPAS, Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Shri Ashok Dogra, aged 35 years s/o Shri Devi Dutt Dogra, r/o Village Khasgran (Basi), P.O. Chauki Jamwalan, Tehsil & District Hamirpur (H.P.).
2. Smt. Sudershna Devi, aged 32 years d/o Shri Gian Chand Lakhanpal, r/o Villlage Gandholi (Ropar) P. O. Gahlian-Kohlwin, Tehsil Nadaun, District Hamirpur (H.P.).

.. Applicants.

Versus

General public

Subject.—Proclamation for the registration of marriage under section 16 of Special Marriage Act, 1954.

Shri Ashok Dogra and Smt. Sudershna Devi have filed an application alongwith affidavits in the court of undersigned under section 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 21-11-2009 at Kalka Mandir situated at Tikkar, Tehsil Barsar, District Hamirpur (HP) and they are living as husband and wife since then, hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 28-12-2010. The objection received after 28-12-2010 will not be entertained and marriage will be registered accordingly.

Issued today on 27-11-2010 under my hand and seal of the court.

Seal.

PANKAJ RAI,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).*

**In the Court of Shri Pankaj Rai, HPAS, Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Shri Naresh Kumar, aged 24 years s/o Shri Rup Lal, r/o Village Samlehu, P.O. Baroti Tehsil Sunder Nagar, District Mandi (HP) at present c/o Shri Sushil Kumar s/o Shri Dile Ram, Village Dhar Sabri, P.O. Tehsil & District Hamirpur (H.P.).
2. Smt. Anjana Kumari, aged 22 years d/o Shri Ramesh Kumar, r/o Villlage & P. O. Baroti Tehsil Sunder Nagar, District Mandi (H.P.). . . Applicants.

Versus

General public

Subject.—Proclamation for the registration of marriage under section 16 of Special Marriage Act, 1954.

Shri Naresh and Smt. Anjana Kumari have filed an application alongwith affidavits in the court of undersigned under section 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 19-11-2010 at Vidhata Kripadhan Trust Goteswar Mahadev Mandir Gasota, District Hamirpur (HP) and they are living as husband and wife since then, hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this

court on or before 28-12-2010. The objection received after 28-12-2010 will not be entertained and marriage will be registered accordingly.

Issued today on 25-11-2010 under my hand and seal of the court.

Seal.

PANKAJ RAI,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).*

**In the Court of Shri Pankaj Rai, HPAS, Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Shri Parkash Chand, aged 50 years s/o Shri Shuru Ram, r/o Village Dulera, P.O., Tehsil & District Hamirpur (H.P.).
2. Smt. Sumna Devi, aged 31 years d/o Shri Ramesh Chand, r/o V. P. O. Mohin, Tehsil & District Hamirpur (H.P.).

. . Applicants.

Versus

General public

Subject.—Proclamation for the registration of marriage under section 16 of Special Marriage Act, 1954.

Shri Parkash Chand and Smt. Sumna Devi have filed an application alongwith affidavits in the court of undersigned under section 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 15-12-2009 at Santoshi Mata Mandir, Hamirpur (HP) and they are living as husband and wife since then, hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 28-12-2010. The objection received after 28-12-2010 will not be entertained and marriage will be registered accordingly.

Issued today on 24-11-2010 under my hand and seal of the court.

Seal.

PANKAJ RAI,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).*

**In the Court of Shri Pankaj Rai, HPAS, Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Shri Rakesh Kumar, aged 32 years s/o Shri Braham Dass, r/o Village Lay, P.O. Nareli, Tehsil & District Hamirpur (H.P.).

2. Smt. Septu Devi, aged 18 years d/o Shri Charan Singh, r/o Village & P. O. Suchani, Tehsil & District Hamirpur (H.P.). . . Applicants.

Versus

General public

Subject.—Notice of the Intended Marriage.

Shri Rakesh and Smt. Septu Devi have filed an application alongwith affidavits in the court of undersigned under Special Marriage Act, 1954 in which they stated they intend to solemnized marriage within one month.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 28-12-2010. The objection received after 28-12-2010 will not be entertained and marriage will be registered accordingly.

Issued today on 26-11-2010 under my hand and seal of the court.

Seal.

PANKAJ RAI,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).*

**In the Court of Shri Pankaj Rai, HPAS, Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Shri Sanjeev Kumar, aged 33 years s/o Shri Jagat Ram, r/o Village & P.O. Thathwani, Tehsil Bhoranj, District Hamirpur, at present c/o Vijay Thakur s/o Shri Piar Singh, r/o House No. 485, Ward No. 1, Hira Nagar Hamirpur (H.P.).
2. Smt. Ansha Devi, aged 19 years d/o Shri Puran Singh, r/o Villlage & P. O. Suchani, Tehsil & District Kullu (H.P.).

. . Applicants.

Versus

General public

Subject.—Notice of the Intended Marriage.

Shri Sanjeev Kumar and Smt. Ansha Devi have filed an application alongwith affidavits in the court of undersigned under Special Marriage Act, 1954 in which they stated they intend to solemnized marriage within one month.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 28-12-2010. The objection received after 28-12-2010 will not be entertained and marriage will be registered accordingly.

Issued today on 26-11-2010 under my hand and seal of the court.

Seal.

PANKAJ RAI,
Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).

ब अदालत श्री डी० के० रतन, स्पेशल मैरिज अधिकारी (एस० डी० एम०), जोगिन्दरनगर, जिला मण्डी,
हिमाचल प्रदेश

ब मुकद्दमा :

श्री मानविन्द्र वर्मा पुत्र श्री टेक चन्द वर्मा, निवासी लक्ष्मी बाजार जोगिन्दरनगर, जिला मण्डी, हिमाचल प्रदेश
(पति)।

श्रीमती दिप्ति वर्मा पत्नी श्री मानविन्द्र वर्मा पुत्री श्री बंशी राम वर्मा, निवासी लक्ष्मी बाजार
जोगिन्दरनगर, जिला मण्डी, हिमाचल प्रदेश
(पत्नी)।

बनाम

आम जनता

प्रार्थना—पत्र जेर धारा 15 चैप्टर—III स्पेशल मैरिज ऐक्ट, 1954 के अन्तर्गत विवाह पंजीकृत करने बारे।

उपरोक्त मामला में श्री मानविन्द्र वर्मा व श्रीमती दिप्ति वर्मा ने न्यायालय में प्रार्थना—पत्र पेश किया है कि उन्होंने दिनांक 15-11-2010 को हिन्दू रिति-रिवाज के साथ जोगिन्दरनगर में शादी की है और तब से वह पति-पत्नी के रूप में रहते चले आ रहे हैं। अतः जेर धारा 15, चैप्टर—III स्पेशल मैरिज ऐक्ट 1954 के अन्तर्गत उनका विवाह पंजीकृत किया जावे।

अतः आम जनता व उनके रिश्तेदारों, माता-पिता को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी भी व्यक्ति को इस बारा कोई उजर व एतराज हो तो वह दिनांक 29-12-2010 को दोपहर 2.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत होकर पेश करें अन्यथा एकतरफा कार्यवाही अमल में लाई जाकर शादी पंजीकरण प्रमाण—पत्र जारी कर दिया जावेगा तथा बाद में कोई भी उजर काबले समायत न होगा।

आज दिनांक 26-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ है।

मोहर।

डी० के० रतन,
स्पेशल मैरिज अधिकारी (एस० डी० एम०),
जोगिन्दरनगर, जिला मण्डी, हिमाचल प्रदेश।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, सदर मण्डी, हिमाचल प्रदेश

श्रीमती भजनू उर्फ चन्दी, निवासी टिहरी, डा० टिहरी सदर मण्डी, जिला मण्डी, हिमाचल प्रदेश

बनाम

आम जनता

सर्वसाधारण को सूचित किया जाता है कि श्रीमती भजनू उर्फ चन्दी सुपुत्री श्री जय राम, निवासी टिहरी सदर मण्डी, ग्राम पंचायत टिहरी ने एक आवेदन-पत्र इस कार्यालय में धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत उनके स्वयं का जन्म दिनांक 6-12-1967 है, को ग्राम पंचायत टिहरी के रिकार्ड में दर्ज होने बारे दायर किया है।

अतः इस बारे किसी को कोई उजर-एतराज हो तो वह दिनांक 20-12-2010 को अदालत हजा में आकर अपना एतराज पेश कर सकता है अन्यथा एकतरफा कार्यवाही अमल में लाई जावेगी।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
सदर मण्डी, हिमाचल प्रदेश।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, सदर मण्डी, हिमाचल प्रदेश

श्री फतू पुत्र श्री डोलू निवासी टिहरी, डा0 टिहरी सदर मण्डी, जिला मण्डी, हिमाचल प्रदेश

बनाम

आम जनता

सर्वसाधारण को सूचित किया जाता है कि श्री फतू सुपुत्र श्री डोलू निवासी टिहरी, डा0 टिहरी मण्डी, ग्राम पंचायत टिहरी ने एक आवेदन-पत्र इस कार्यालय में धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत उनके स्वयं का जन्म दिनांक 9-7-1968 है, को ग्राम पंचायत टिहरी के रिकार्ड में दर्ज होने बारे दायर किया है।

अतः इस बारे किसी को कोई उजर-एतराज हो तो वह दिनांक 20-12-2010 को अदालत हजा में आकर अपना एतराज पेश कर सकता है अन्यथा एकतरफा कार्यवाही अमल में लाई जावेगी।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
सदर मण्डी, हिमाचल प्रदेश।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, सदर मण्डी, हिमाचल प्रदेश

श्री मणकू उर्फ खीमी राम, निवासी टिहरी, डा0 टिहरी सदर मण्डी, जिला मण्डी, हिमाचल प्रदेश

बनाम

आम जनता

सर्वसाधारण को सूचित किया जाता है कि श्री मणकू उर्फ खीमी राम, निवासी टिहरी, डा0 टिहरी मण्डी, ग्राम पंचायत टिहरी ने एक आवेदन-पत्र इस कार्यालय में धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत उनके स्वयं का जन्म दिनांक 14-1-1966 है, को ग्राम पंचायत टिहरी के रिकार्ड में दर्ज होने बारे दायर किया है।

अतः इस बारे किसी को कोई उजर-एतराज हो तो वह दिनांक 20-12-2010 को अदालत हजा में आकर अपना एतराज पेश कर सकता है अन्यथा एकतरफा कार्यवाही अमल में लाई जावेगी।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
सदर मण्डी, हिमाचल प्रदेश।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, सदर मण्डी, हिमाचल प्रदेश

श्री नीमे राम पुत्र श्री लालू, निवासी टिहरी, डा0 टिहरी सदर मण्डी, जिला मण्डी, हिमाचल प्रदेश

बनाम

आम जनता

सर्वसाधारण को सूचित किया जाता है कि श्री निमे राम पुत्र श्री लालू, निवासी टिहरी, डा0 टिहरी मण्डी, ग्राम पंचायत टिहरी ने एक आवेदन-पत्र इस कार्यालय में धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत उनके स्वयं का जन्म दिनांक 25-6-1970 है, को ग्राम पंचायत टिहरी के रिकार्ड में दर्ज होने बारे दायर किया है।

अतः इस बारे किसी को कोई उजर-एतराज हो तो वह दिनांक 20-12-2010 को अदालत हजा में आकर अपना एतराज पेश कर सकता है अन्यथा एकतरफा कार्यवाही अमल में लाई जावेगी।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
सदर मण्डी, हिमाचल प्रदेश।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, सदर मण्डी, हिमाचल प्रदेश

श्री धर्म चन्द पुत्र श्री झावे राम, निवासी टिहरी, डा0 टिहरी सदर मण्डी, जिला मण्डी, हिमाचल प्रदेश

बनाम

आम जनता

सर्वसाधारण को सूचित किया जाता है कि श्री धर्म चन्द पुत्र श्री झावे राम, निवासी टिहरी, डा0 टिहरी मण्डी, ग्राम पंचायत टिहरी ने एक आवेदन-पत्र इस कार्यालय में धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत उनके स्वयं का जन्म दिनांक 5-4-1966 है, को ग्राम पंचायत टिहरी के रिकार्ड में दर्ज होने बारे दायर किया है।

अतः इस बारे किसी को कोई उजर-एतराज हो तो वह दिनांक 20-12-2010 को अदालत हजा में आकर अपना एतराज पेश कर सकता है अन्यथा एकतरफा कार्यवाही अमल में लाई जावेगी।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
सदर मण्डी, हिमाचल प्रदेश।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, सदर मण्डी, जिला मण्डी, हिमाचल प्रदेश

श्री बसाखू उर्फ कर्म दास पुत्र श्री दमटू, निवासी टिहरी, डा0 टिहरी, तहसील सदर मण्डी, जिला मण्डी, हिमाचल प्रदेश।

बनाम

आम जनता

सर्वसाधारण को सूचित किया जाता है कि श्री बसाखू उर्फ कर्म दास पुत्र श्री दमटू, निवासी टिहरी, डा0 टिहरी मण्डी, ग्राम पंचायत टिहरी ने एक आवेदन-पत्र इस कार्यालय में धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत उनके स्वयं का जन्म दिनांक 20-4-1969 है, को ग्राम पंचायत टिहरी के रिकार्ड में दर्ज होने बारे दायर किया है।

अतः इस बारे किसी को कोई उजर-एतराज हो तो वह दिनांक 20-12-2010 को अदालत हजा में आकर अपना एतराज पेश कर सकता है अन्यथा एकतरफा कार्यवाही अमल में लाई जावेगी।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
सदर मण्डी, हिमाचल प्रदेश।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, सदर मण्डी, जिला मण्डी, हिमाचल प्रदेश

श्री कर्म दास पुत्र श्री जय राम, निवासी टिहरी, डा0 टिहरी, तहसील सदर मण्डी, जिला मण्डी, हिमाचल प्रदेश

बनाम

आम जनता

सर्वसाधारण को सूचित किया जाता है कि श्री कर्म दास पुत्र श्री जय राम, निवासी टिहरी, सदर मण्डी, ग्राम पंचायत टिहरी ने एक आवेदन-पत्र इस कार्यालय में धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के तहत उनके स्वयं का जन्म दिनांक 25-7-1972 है, को ग्राम पंचायत टिहरी के रिकार्ड में दर्ज होने बारे दायर किया है।

अतः इस बारे किसी को कोई उजर-एतराज हो तो वह दिनांक 20-12-2010 को अदालत हजा में आकर अपना एतराज पेश कर सकता है अन्यथा एकतरफा कार्यवाही अमल में लाई जावेगी।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
सदर मण्डी, हिमाचल प्रदेश।

**Before the Authority under Payment of Wages Act-cum-Sub-Divisional Magistrate, Padhar
District Mandi (H. P.)**

File No. 06

Instd. on 4-2-2009

Decided on/Date of Hearing 28-12-2010

In the matter of :

Shri Roshan Lal s/o Brestu Ram, r/o Village Kothi, P. O. & Tehsil Padhar, District Mandi,
H. P. . . Applicant.

Versus

1. Gian Chand Thakur, Partner in "Shesh Shakti Construction" Village Takoli, P. O. Panarsa, Sub-Tehsil Aut, District Mandi, H.P.

2. Shesh Shakti Construction through its Manager, r/o Village Takoli, P. O. Panarsa, Sub-Tehsil Aut, District Mandi, H.P. . . *Opposite Parties.*

Application u/s 15 of payment of Wages Act, 1936.

Subject.—Proclamation for the service of the opposite parties.

To

1. Shri Gian Chand Thakur, Partner in Shesh Shakti Construction, r/o Village Takoli, P.O. Panarsa, Sub Tehsil Padhar, District Mandi, H.P.
2. Manager, Shesh Shakti Construction, r/o Village Takoli, P. O. Panarsa, Sub-Tehsil Aut, District Mandi, H.P.

Whereas an application u/s 15 of payment of Wages Act, 1936 has been moved by Shri Roshan Lal s/o Barestu Ram, r/o Village Kothi, Tehsil Padhar, District Mand, H.P. Since the above mentioned respondents were summoned through the ordinary services as well as registered A.D. but not effected properly so far.

Hence in view of the above undersigned has come to the satisfaction that the service of summon to the above respondents No. 1 & 2 could not be effected ordinarily. Therefore, this proclamation under order 5 rule 20 CPC is hereby issued for calling the respondents to appear before this court on or before 28-12-2010 at 2.00 P.M. in person or through their legal agent filing objections if any on confessing admittance failing which the orders shall be passed accordingly.

Given under my hand and seal of the court today on 22-11-2010.

Seal.

Sd/-
Authority,
under Payment of Wages Act
Padhar, District Mandi (H.P.).

ब अदालत श्री एस0 एल0 बन्सल, सहायक समाहर्ता, प्रथम श्रेणी, रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश

नं० मुकद्दमा : 96 / 2010

तारीख दायर : 1-9-2010

श्री भगत सिंह पुत्र श्री जिया लाल, गांव बणी बासा, उप-तहसील ननखरी, जिला शिमला (हि० प्र०)
प्रार्थी ।

बनाम

1. श्रीमती दयावती पुत्री श्री जिया लाल, निवासी गांव बणी बासा, उप-तहसील ननखरी, जिला शिमला ।
2. श्रीमती पुनमा देवी पुत्री श्री जिया लाल, निवासी गांव बणी बासा, उप-तहसील ननखरी, जिला शिमला हालावाद, गांव जदून, तहसील कुमारसैन, जिला शिमला ।

3. श्रीमती भजना देवी पुत्री श्री झलमी, निवासी गांव बणी बासा, उप-तहसील ननखरी, जिला शिमला हालावाद पत्नी श्री मोहन लाल, गांव करोली, उप-तहसील ननखरी, जिला शिमला (हि0 प्र0)।
 4. श्रीमती रक्षा पुत्री श्री झलमी, निवासी गांव बणी बासा, उप-तहसील ननखरी, जिला शिमला हालावाद पत्नी नामालूम, गांव शुकीनाली, तहसील कोटखाई, जिला शिमला (हि0 प्र0)।
 5. श्री मदन लाल पुत्र श्री केसू, निवासी गांव बणी बासा, उप-तहसील ननखरी, जिला शिमला।
 6. श्री चेत राम पुत्र श्री केसू, निवासी गांव बणी बासा, उप-तहसील ननखरी, जिला शिमला।
 7. श्रीमती शकुन्तला पुत्री श्री धनु, निवासी गांव बणी बासा, उप-तहसील ननखरी, जिला शिमला।
 8. श्री बिजलू पुत्र श्री गोपू, निवासी गांव दरोटी, उप-तहसील ननखरी, जिला शिमला।
 9. श्री रतन दास पुत्र श्री भीम सिंह, निवासी गांव दरोटी, उप-तहसील ननखरी, जिला शिमला।
 10. श्रीमती ठूली देवी विधवा श्री कीर्पू, निवासी गांव दरोटी, उप-तहसील ननखरी, जिला शिमला।
- प्रतिवादी।

दरखास्त तकसीम जेर धारा 123 हि0प्र0भू0रा0अ0 1954 बावत अराजी किते 23 रकबा तादादी 00-97-57 है0 मुन्दर्जा खाता/खतौनी नं0 64/161 ता 168 वाका चक बणी बासा, उप-तहसील ननखरी, जिला शिमला (हि0 प्र0)।

नोटिस बनाम आम जनता।

प्रार्थी श्री भगत सिंह पुत्र श्री जिया लाल, गांव बणी बासा, उप-तहसील ननखरी, जिला शिमला (हि0 प्र0) का अराजी किते 23 रकबा तादादी 00-97-57 है0 मुन्दर्जा खाता/खतौनी नं0 64/161 ता 168 वाका चक बणी बासा, उप-तहसील ननखरी, जिला शिमला (हि0 प्र0) का तकसीम प्रकरण इस अदालत में विचाराधीन है। प्रतिवादी नं0 1 ता 10 की तामील बार-बार समन जारी करने के उपरान्त भी असालतन नहीं हो पा रही है, जिस कारण इस अदालत को यकीन हो गया है कि इनकी तामील साधारण तरीके से होनी सम्भव प्रतीत नहीं होती है। इन प्रतिवादी की तामील असालतन न होने के कारण तकसीम प्रकरण लम्बित चला आ रहा है। अतः प्रतिवादी नं0 1 ता 10 को इस इशतहार द्वारा सूचित किया जाता है कि वे दिनांक 20-12-2010 को प्रातः 10.00 बजे असालतन या वकालतन पैरवी मुकद्दमा हेतु हाजिर अदालत आये। हाजिर न आने की सूरत में यह समझा जावेगा कि आपको इन खातों की तकसीम बारा किसी भी प्रकार का उजर व एतराज नहीं है तथा यकतरफा कार्यवाही अमल में लाई जावेगी।

आज दिनांक 20-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

एस0 एल0 बन्सल,
सहायक समाहर्ता, प्रथम श्रेणी,
रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश।

ब अदालत श्री एस0 एल0 बन्सल, सहायक समाहर्ता, प्रथम श्रेणी, रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश

नं0 मुकद्दमा : 48/2010

तारीख दायर : 2-4-2010

श्री देविन्दर पुत्र स्व0 श्री दिगम्बर देव, गांव निरथ, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)

प्रार्थी।

बनाम

1. श्री भाऊ राम पुत्र स्व0 श्री श्याम लाल, निवासी ग्राम नागाधार, उप-तहसील ननखरी, जिला शिमला।

2. श्री कृष्ण सिंह पुत्र श्री रतन दास, निवासी ग्राम चून्जा, तहसील रामपुर बुशैहर, जिला शिमला।
 3. श्री ईश्वर चन्द पुत्र श्री काशी राम, निवासी मौणी, तहसील निरमण्ड, जिला कुल्लू (हि० प्र०)।
 4. श्री देश राज पुत्र श्री काशी राम, निवासी मौणी, तहसील निरमण्ड, जिला कुल्लू (हि० प्र०)।
 5. श्री प्रकाश पुत्र श्री काशी राम, निवासी मौणी, तहसील निरमण्ड, जिला कुल्लू (हि० प्र०)।
 6. श्री प्रेम चन्द पुत्र श्री काशी राम, निवासी मौणी, तहसील निरमण्ड, जिला कुल्लू (हि० प्र०)।
- प्रतिवादी।

दरखास्त तकसीम जेर धारा 123 हि०प्र०भू०रा०अ० 1954 बावत अराजी किते 58 रकबा तादादी 01-73-01 है० मुन्दर्जा खाता/खतौनी नं० 8/21 ता 50 वाका चक निरथ, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०)।

प्रार्थी श्री देविन्दर पुत्र स्व० श्री दिगम्बर देव, गांव निरथ, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) का अराजी किते 58 रकबा तादादी 01-73-01 है० मुन्दर्जा खाता/खतौनी नं० 8/21 ता 50 वाका चक निरथ, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) का तकसीम प्रकरण इस अदालत में विचाराधीन है। प्रतिवादी नं० 1 ता 6 की तामील बार-बार समन जारी करने के उपरान्त भी असालतन नहीं हो पा रही है, जिस कारण इस अदालत को यकीन हो गया है कि इनकी तामील साधारण तरीके से होनी सम्भव प्रतीत नहीं होती है। इन प्रतिवादी की तामील असालतन न होने के कारण तकसीम प्रकरण लम्बित चला आ रहा है। अतः प्रतिवादी नं० 1 ता 6 को इस इशतहार द्वारा सूचित किया जाता है कि वे दिनांक 20-12-2010 को प्रातः 10.00 बजे असालतन या वकालतन पैरवी मुकद्दमा हेतु हाजिर अदालत आये। हाजिर न आने की सूरत में यह समझा जावेगा कि आपको इन खातों की तकसीम बारा किसी भी प्रकार का उजर व एतराज नहीं है तथा यकतरफा कार्यवाही अमल में लाई जावेगी।

आज दिनांक 20-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

एस० एल० बन्सल,
सहायक समाहर्ता, प्रथम श्रेणी,
रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश।

ब अदालत श्री एस० एल० बन्सल, सहायक समाहर्ता, प्रथम श्रेणी, रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश
नं० मुकद्दमा : 88/2010 तारीख दायर : 8-7-2010

श्री मदन सिंह पुत्र श्री पदम सिंह, गांव कन्दरेड़ी, उप-तहसील ननखरी, जिला शिमला (हि० प्र०)
प्रार्थी।

बनाम

1. श्रीमती बबली पुत्री श्री धनी राम हालावाद पत्नी श्री गोविन्द, निवासी ग्राम सराहन, तहसील रामपुर बुशैहर, जिला शिमला।
 2. श्रीमती प्रभा देवी पत्नी श्री गोपाल दास, निवासी ग्राम मनोली, तहसील कुमारसैन, जिला शिमला।
 3. श्री हरी सिंह पुत्र श्री दतू, निवासी ग्राम अमरनाल (भरेरी), तहसील कुमारसैन, जिला शिमला।
 4. श्री गोपाल सिंह पुत्र श्री किशू, निवासी ग्राम तुनन, तहसील निरमण्ड, जिला कुल्लू (हि० प्र०)।
 5. श्री ईन्द्र देव पुत्र श्री मोहन लाल, निवासी मौणी, तहसील निरमण्ड, जिला कुल्लू (हि० प्र०)।
 6. श्री प्रेम चन्द पुत्र श्री काशी राम, निवासी ग्राम मनोली, तहसील कुमारसैन, जिला शिमला।
- प्रतिवादी।

दरखास्त तकसीम जेरधारा 123 हि०प्र०भू०रा०अ० 1954 बावत अराजी खसरा नं० 288 रकबा तादादी 4791-00 वर्ग डै० मी० मुन्दर्जा खाता/खतौनी नं० 6 मिन/11 व खसरा नं० 280 रकबा तादादी

2850-70 वर्ग डै0 मी0 मुन्दर्जा खाता खतौनी नं0 7 मिन/12 वाका चक लहासा, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)।

प्रार्थी श्री मदन सिंह पुत्र श्री पदम सिंह, गांव कन्दरेड़ी, उप-तहसील ननखरी, जिला शिमला (हि0 प्र0) का अराजी खसरा नं0 288 रकबा तादादी 4791-00 वर्ग डै0 मी0 मुन्दर्जा खाता/खतौनी नं0 6 मिन/11 व खसरा नं0 280 रकबा तादादी 2850-70 वर्ग डै0 मी0 मुन्दर्जा खाता खतौनी नं0 7 मिन/12 वाका चक लहासा, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0) का तकसीम प्रकरण इस अदालत में विचाराधीन है। प्रतिवादी नं0 1 ता 5 की तामील बार-बार समन जारी करने के उपरान्त भी असालतन नहीं हो पा रही है, जिस कारण इस अदालत को यकीन हो गया है कि इनकी तामील साधारण तरीके से होनी सम्भव प्रतीत नहीं होती है। इन प्रतिवादी की तामील असालतन न होने के कारण तकसीम प्रकरण लम्बित चला आ रहा है। अतः प्रतिवादी नं0 1 ता 5 को इस इशतहार द्वारा सूचित किया जाता है कि वे दिनांक 20-12-2010 को प्रातः 10.00 बजे असालतन या वकालतन पैरवी मुकद्दमा हेतु हाजिर अदालत आये। हाजिर न आने की सूरत में यह समझा जावेगा कि आपको इन खातों की तकसीम बारा किसी भी प्रकार का उजर व एतराज नहीं है तथा यकतरफा कार्यवाही अमल में लाई जावेगी।

आज दिनांक 20-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

एस0 एल0 बन्सल,
सहायक समाहर्ता, प्रथम श्रेणी,
रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश।

ब अदालत श्री एस0 एल0 बन्सल, सहायक समाहर्ता, प्रथम श्रेणी, रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश

नं0 मुकद्दमा : 103/2010

तारीख दायर : 14-9-2010

श्री जगदीश चन्द पुत्र श्री मान दास, गांव कुरनू, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)

प्रार्थी।

बनाम

1. कुमारी राम प्यारी पुत्री श्री चरण दास, निवासी कुरनू, हालावाद पत्नी श्री गंगा राम, निवासी ग्राम घाट, उप-तहसील ननखरी, जिला शिमला।
2. कुमारी उषा देवी पुत्री श्री चरण दास, निवासी कुरनू, हालावाद पत्नी श्री विदू, निवासी ग्राम देवटन, तहसील रामपुर बुशैहर, जिला शिमला।
3. श्री लाहरी पुत्र श्री झान्पी, निवासी कुरनू, तहसील रामपुर बुशैहर, जिला शिमला।
4. श्री दलू पुत्र श्री झान्पी, निवासी पेई, तहसील रामपुर बुशैहर, जिला शिमला।
5. श्रीमती चन्दू पुत्री श्री झान्पी, निवासी पेई, तहसील रामपुर बुशैहर, जिला शिमला।
6. श्रीमती बाबरू पुत्री श्री झान्पी, निवासी पेई, तहसील रामपुर बुशैहर, जिला शिमला।
7. श्रीमती जोतू पुत्री श्री दासू निवासी पेलन, तहसील रामपुर बुशैहर, जिला शिमला हालावाद पत्नी हमली राम, गांव औंडी, उप-तहसील ननखरी, जिला शिमला प्रतिवादी।

दरखास्त तकसीम जेर धारा 123 हि0प्र0भू0रा0अ0 1954 बावत अराजी किते 36 रकबा तादादी 05-35-76 है0 मुन्दर्जा खाता/खतौनी नं0 49/109 ता 114 वाका चक कुरनू, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)।

प्रार्थी श्री जगदीश चन्द पुत्र श्री मान दास, गांव कुरनू, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0) का अराजी किते 36 रकबा तादादी 05-35-76 है0 मुन्दर्जा खाता/खतौनी नं0 49/109 ता 114 वाका

चक कुरनू, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0) का तकसीम प्रकरण इस अदालत में विचाराधीन है। प्रतिवादी नं0 1 ता 7 की तामील बार-बार समन जारी करने के उपरान्त भी असालतन नहीं हो पा रही है, जिस कारण इस आदालत को यकीन हो गया है कि इनकी तामील साधारण तरीके से होनी सम्भव प्रतीत नहीं होती है। इन प्रतिवादी की तामील असालतन न होने के कारण तकसीम प्रकरण लम्बित चला आ रहा है। अतः प्रतिवादी नं0 1 ता 7 को इस इशतहार द्वारा सूचित किया जाता है कि वे दिनांक 20-12-2010 को प्रातः 10.00 बजे असालतन या वकालतन पैरवी मुकद्दमा हेतु हाजिर अदालत आये। हाजिर न आने की सूरत में यह समझा जावेगा कि आपको इन खातों की तकसीम बारा किसी भी प्रकार का उजर व एतराज नहीं है तथा एकतरफा कार्यवाही अमल में लाई जावेगी।

आज दिनांक 20-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

एस0 एल0 बन्सल,
सहायक समाहर्ता, प्रथम श्रेणी,
रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश।

ब अदालत श्री प्यारे लाल, कार्यकारी दण्डाधिकारी रोहडू, जिला शिमला, हिमाचल प्रदेश

श्री केसर सिंह पुत्र श्री शिव राम, निवासी पुजारली, तहसील रोहडू, जिला शिमला (हि0 प्र0) . . प्रार्थी।

बनाम

आम जनता

विषय.—प्रार्थी की पुत्री की जन्म तिथि ग्राम पंचायत समरकोट में पंजीकृत करने बारे आवेदन—पत्र।

विषय उपरोक्त में प्रार्थी श्री केसर सिंह सुपुत्र श्री शिव राम, निवासी पुजारली, तहसील रोहडू, जिला शिमला (हि0 प्र0) ने इस न्यायालय में एक दरखास्त गुजारी है जिसमें प्रार्थी ने निवेदन किया है कि वह अपनी सुपुत्री रितिका की जन्म तिथि का इन्द्राज ग्राम पंचायत समरकोट में समय पर पंजीकृत नहीं करवा सका तथा अब करवाना चाहता है। प्रार्थी की सुपुत्री की जन्म तिथि 5-5-2006 है। इस बारे प्रार्थी ने अपना शपथ—पत्र भी प्रस्तुत किया है।

अतः सर्वसाधारण को इस इशतहार के माध्यम से सूचित किया जाता है कि यदि किसी भी व्यक्ति को प्रार्थी की सुपुत्री रितिका की जन्म तिथि को ग्राम पंचायत समरकोट में पंजीकृत करने बारे कोई भी उजर व एतराज हो तो वह दिनांक 20-12-2010 को या इससे पूर्व प्रातः 10 बजे इस न्यायालय में असालतन या वकालतन हाजिर आकर अपना एतराज प्राप्त करें अन्यथा एकतरफा कार्यवाही अमल में लाई जाएगी तथा पंजीकरण के आदेश पारित किए जाएंगे।

आज दिनांक 22-11-2010 को हमारे हस्ताक्षर एवं मोहर अदालत से जारी किया गया।

मोहर।

प्यारे लाल,
कार्यकारी दण्डाधिकारी रोहडू,
जिला शिमला, हिमाचल प्रदेश।

ब अदालत श्री बलवीर सिंह गर्ग, कार्यकारी दण्डाधिकारी, नाहन, जिला सिरमौर, हिमाचल प्रदेश

श्री संजय सिंह पुत्र श्री बेला सिंह, निवासी अमपुर मोहल्ला समीप फायर स्टेशन, तहसील नाहन, जिला सिरमौर, हिमाचल प्रदेश।

बनाम

आम जनता

उपरोक्त प्रार्थना-पत्र श्री संजय सिंह पुत्र श्री बेला सिंह, निवासी अमपुर मोहल्ला समीप फायर स्टेशन, तहसील नाहन, जिला सिरमौर, हिमाचल प्रदेश ने अधीन धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत प्रस्तुत करके प्रार्थना की है कि उनके माता श्रीमती सुरजीत कौर की मृत्यु तिथि 22-2-2008 है, की मृत्यु दिनांक नगरपालिका नाहन के रिकार्ड में दर्ज नहीं करवाई गई है। जिसे प्रार्थी अब दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 31-12-2010 को सुबह दस बजे इस अदालत में उपस्थित आकर प्रस्तुत करे, बसूरत दीगर श्रीमती सुरजीत कौर की मृत्यु तिथि को दर्ज करने के आदेश जारी कर दिए जावेंगे।

आज दिनांक 26-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

बलवीर सिंह गर्ग,
कार्यकारी दण्डाधिकारी,
नाहन, जिला सिरमौर, हिमाचल प्रदेश।

ब अदालत श्री बलवीर सिंह गर्ग, कार्यकारी दण्डाधिकारी, नाहन, जिला सिरमौर, हिमाचल प्रदेश

श्री मनजीत सिंह पुत्र श्री किरन सिंह, निवासी गोविन्दगढ़ नाहन, तहसील नाहन, जिला सिरमौर, हिमाचल प्रदेश।

बनाम

आम जनता

उपरोक्त प्रार्थना-पत्र श्री मनजीत सिंह पुत्र श्री किरन सिंह, निवासी गोविन्दगढ़ नाहन, तहसील नाहन, जिला सिरमौर, हिमाचल प्रदेश ने अधीन धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत प्रस्तुत करके प्रार्थना की है कि उनके पुत्र सुखविन्द्र सिंह जिसकी जन्म तिथि 16-7-2007 है, का नाम नगरपालिका नाहन के रिकार्ड में दर्ज नहीं करवाया गया है। जिसे प्रार्थी अब दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 31-12-2010 को सुबह दस बजे इस अदालत में उपस्थित आकर प्रस्तुत करें, बसूरत दीगर सुखविन्द्र सिंह का नाम एवं जन्म तिथि को दर्ज करने के आदेश जारी कर दिए जावेंगे।

आज दिनांक 26-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

बलवीर सिंह गर्ग,
कार्यकारी दण्डाधिकारी,
नाहन, जिला सिरमौर, हिमाचल प्रदेश।

ब अदालत श्री बलवीर सिंह गर्ग, कार्यकारी दण्डाधिकारी, नाहन, जिला सिरमौर, हिमाचल प्रदेश

श्री ईकबाल सिंह पुत्र श्री शमशेर सिंह, निवासी गोविन्दगढ़ नाहन, तहसील नाहन, जिला सिरमौर, हिमाचल प्रदेश।

बनाम

आम जनता

उपरोक्त प्रार्थना-पत्र श्री इकबाल सिंह पुत्र श्री शमशेर सिंह, निवासी गोविन्दगढ़ नाहन, तहसील नाहन, जिला सिरमौर, हिमाचल प्रदेश ने अधीन धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत प्रस्तुत करके प्रार्थना की है कि उनकी अपनी जन्म तिथि 23-11-1969 है, का नाम नगरपालिका नाहन के रिकार्ड में दर्ज नहीं करवाया गया है। जिसे प्रार्थी अब दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 31-12-2010 को सुबह दस बजे इस अदालत में उपस्थित आकर प्रस्तुत करे, बसूरत दीगर ईकबाल सिंह का नाम व जन्म तिथि को दर्ज करने के आदेश जारी कर दिए जावेंगे।

आज दिनांक 23-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

बलवीर सिंह गर्ग,
कार्यकारी दण्डाधिकारी,
नाहन, जिला सिरमौर, हिमाचल प्रदेश।

ब अदालत श्री चेतन चौहान, कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्री ओम प्रकाश पुत्र श्री सरदा राम, निवासी रामपूर वन्जारण, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश।

बनाम

आम जनता

उपरोक्त प्रार्थना-पत्र श्री ओम प्रकाश पुत्र श्री सरदा राम, निवासी रामपूर वन्जारण, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश ने अधीन धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत प्रार्थना-पत्र प्रस्तुत करके प्रार्थना की है कि उनकी बुआ श्रीमती परसनी पुत्री श्री सावणू पत्नी श्री साधू जिसकी मृत्यु तिथि 8-10-1998 है, का नाम ग्राम पंचायत रामपूर वन्जारण के रिकार्ड में दर्ज नहीं करवाया गया है। जिसे प्रार्थी अब दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 21-12-2010 को सुबह दस बजे इस अदालत में उपस्थित आकर प्रस्तुत करे बसूरत दीगर श्रीमती परसनी पुत्री श्री सालू पत्नी श्री सावणू की मृत्यु तिथि को दर्ज करने के आदेश जारी कर दिए जावेंगे।

आज दिनांक 22-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

चेतन चौहान,
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश।

ब अदालत श्री चेतन चौहान, कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्री निका सिंह पुत्र श्री हरनाम सिंह, निवासी तारुवाला, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश।

बनाम

आम जनता

उपरोक्त प्रार्थना-पत्र श्री निका सिंह पुत्र श्री हरनाम सिंह, निवासी तारुवाला, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश ने अधीन धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत प्रार्थना-पत्र प्रस्तुत करके प्रार्थना की है कि उनकी पुत्री मनजीत कौर जिसकी जन्म तिथि 1-1-1983 है, का नाम ग्राम पंचायत बद्रीपुर के रिकार्ड में दर्ज नहीं करवाया गया है। जिसे प्रार्थी अब दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 21-12-2010 को सुबह दस बजे इस अदालत में उपस्थित आकर प्रस्तुत करे बसूरत दीगर मनजीत कौर 1-1-1983 का नाम एवं जन्म तिथि को दर्ज करने के आदेश जारी कर दिए जावेंगे।

आज दिनांक 22-11-2010 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

चेतन चौहान,
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश।

ब अदालत उप-मण्डल दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

उनवान मुकद्दमा :

श्रीमती पुष्पा देवी पुत्री श्री लाल सिंह पत्नी श्री राम बहादुर, निवासी ग्राम शमाहां, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश . . प्रार्थी।

बनाम

आम जनता

उपरोक्त प्रार्थना-पत्र श्रीमती पुष्पा देवी पुत्री लाल सिंह पत्नी श्री राम बहादुर, निवासी ग्राम शमाहां, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश ने इस न्यायालय में आवेदन किया है कि उसके बच्चों सुनीता, अमिता एवं सुनील की जन्म तिथि क्रमशः 18-12-83, 14-6-88 व 29-9-1990 जो ग्राम पंचायत/नगर परिषद में दर्ज नहीं है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि अगर उपरोक्त जन्म तिथियां दर्ज करने बारे किसी को कोई उजर या एतराज हो तो वह असालतन या वकालतन मिति 10-12-2010 को सुबह दस बजे हाजिर होकर अपना उजर व एतराज पेश कर सकता है। बाद तारीख मुकर्रर पर कोई उजर व एतराज प्राप्त न हुआ तो कार्यवाही एकतरफा मामले में निर्णय कर दिया जाएगा।

इशतहार आज दिनांक 11-11-2010 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
उप-मण्डल दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश।

ब अदालत उप-मण्डल दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

उनवान मुकद्दमा :

श्रीमती कमलेश पुत्री सुरेन्द्र पत्नी श्री प्रेम सिंह विष्ट, निवासी ग्राम शमाहां, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश . . प्रार्थी ।

बनाम

आम जनता

उपरोक्त प्रार्थना-पत्र श्रीमती कमलेश पुत्री सुरेन्द्र पत्नी श्री प्रेम सिंह विष्ट, निवासी ग्राम शमाहां, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश ने इस न्यायालय में आवेदन किया है कि उसकी पुत्री नेहा बिष्ट की जन्म तिथि 12-9-2003 जो ग्राम पंचायत/नगर परिषद शावगा में दर्ज नहीं है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि अगर उपरोक्त जन्म तिथि दर्ज करने बारे किसी को कोई उजर या एतराज हो तो वह असालतन या वकालतन मिति 10-12-2010 को सुबह दस बजे हाजिर होकर कर अपना उजर व एतराज पेश कर सकता है। बाद तारीख मुकर्रर पर कोई उजर व एतराज प्राप्त न हुआ तो कार्यवाही एकतरफा मामले में निर्णय कर दिया जाएगा।

इशतहार आज दिनांक 11-11-2010 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
उप-मण्डल दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश।

In the Court of Shri Lalit Sharma, Executive Magistrate (Tehsildar), Kasauli, District Solan, Himachal Pradesh

Case No. : 34/2010

Date of Institution : 16-11-2010
Date of Decision Pending for 22-12-2010

Shri Kanhaiya Lal s/o Shri Puran Chand, resident of Village Gadyar, Pargana Ajmergarh, Tehsil Kasauli, District Solan, Himachal Pradesh . . Applicant.

Versus

General Public

.. Respondent.

Application under section 13 (3) of Birth and Death Registration Act, 1969.

Shri Kanhaiya Lal s/o Shri puran Chand, resident of Village Gadyar, Pargana Ajmergarh, Tehsil Kasauli, District Solan, Himachal Pradesh has moved an application before the undersigned under section 13 (3) of Birth and Death Registration Act, 1969 alongwith affidavits and other documents that his brother Shri Gita Ram died on 2-2-1971 at Village Gadyar, Tehsil Kasauli, District Solan, Himachal Pradesh but his date of death could not be registered by the applicant in the Gram Panchayat's death record, Chammo, Tehsil Kasauli, District Solan, Himachal Pradesh.

Therefore, by this proclamation the general public is hereby informed that any person having any objection for the registration of date of death of Shri Gita Ram s/o Shri Puran Chand & brother of the applicant may submit his objection in writing in this court on or before 22-12-2010 at 10.00 A. M. failing which no objection will be entertained after *expiry* of date.

Given under my hand and seal of the court this 16th day of November, 2010.

Seal.

LALIT SHARMA,
*Executive Magistrate (Tehsildar),
Kasauli, District Solan, Himachal Pradesh.*

In the Court of Shri Lalit Sharma, Executive Magistrate (Tehsildar), Kasauli, District Solan, Himachal Pradesh

Case No. : 35/2010

Date of Institution : 18-11-2010

Date of Decision Pending for 28-12-2010

Shri Jagdish s/o Shri Tota Ram, resident of Village Sua, P. O. Dhakryana, Tehsil Kasauli, District Solan, Himachal Pradesh . . Applicant.

Versus

General Public

. . Respondent.

Application under section 13 (3) of Birth and Death Registration Act, 1969.

Shri Jagdish s/o Shri Tota Ram, resident of Village Sua, P. O. Dhakryana, Tehsil Kasauli, Tehsil Kasauli, District Solan, Himachal Pradesh has moved an application before the undersigned under section 13 (3) of Birth and Death Registration Act, 1969 alongwith affidavits and other documents that his daughter named Miss Gayatri Devi born on 20-8-2006 at Village Sua, Tehsil Kasauli, District Solan, Himachal Pradesh but his date of birth could not be registered by the applicant in the Gram Panchayat's birth record, Goela, Tehsil Kasauli, District Solan, Himachal Pradesh.

Therefore, by this proclamation the general public is hereby informed that any person having any objection for the registration of date of birth of Miss Gayatri Devi daughter of the applicant may submit his objection in writing in this court on or before 28-12-2010 at 10.00 A. M. failing which no objection will be entertained after *expiry* of date.

Given under my hand and seal of the court this 18th day of November, 2010.

Seal.

LALIT SHARMA,
*Executive Magistrate (Tehsildar),
Kasauli, District Solan, Himachal Pradesh.*

न्यायालय सहायक समाहर्ता प्रथम वर्ग, अर्की, जिला सोलन, हिमाचल प्रदेश

मिसल नं० 19/9 10

तारीख दायरा : 26-7-10

तारीख फैसला :

श्रीमती गंगा देवी पत्नी श्री रोशनू निवासी गांव नावां, परगना सरयांज, तहसील अर्की, जिला सोलन, हिमाचल प्रदेश . . सायला।

बनाम

1. श्रीमती सन्ती देवी पुत्री श्री चौधरी पुत्र श्री रामदत्त,
2. कुमारी चम्पा पुत्री श्री रोशनू

3. सहजराम पुत्र श्री फुलमू " सभी निवासी गांव मान परगना पोबर, तहसील अर्की, जिला सोलन
हिमाचल प्रदेश . . प्रतिवादियान।

दरखास्त तकसीम अराजी खाता खतौनी नं० 22/28, खसरा नं० 32, रकबा 01.13 बीघा व खाता खतौनी नं० 21/27 खसरा नं० 52, रकबा 1.10, बीघा तथा खाता खतौनी नं० 20/26, खसरा नं० 34, 35, 36 58, कित्ता 4, रकबा 12.02, बीघा मौजा नावां, तहसील अर्की, जिला सोलन, हिमाचल प्रदेश मुताबिक जमाबन्दी वर्ष 2002-2003.

इश्तहार बनाम प्रतिवादी नं० 3.

प्रार्थिया श्रीमती गंगा देवी पत्नी श्री रोशनू निवासी गांव नावां, परगना सरयांज, तहसील अर्की ने इस न्यायालय में प्रार्थना-पत्र दिया है कि उसकी उपरोक्त भूमि की तकसीम की जाए तथा उसका खाता अलग कायम किया जाये। प्रतिवादियों को इस तकसीम में अपना पक्ष प्रस्तुत करने का मौका दिया जाएगा जिसपर प्रतिवादी नं० 1 व 2 ने आकर व्यान कलमबन्द करवाए। प्रतिवादी नं० 3 श्री सहजराम पुत्र श्री फुलमू को इस न्यायालय द्वारा बार-बार समन भेजे गए लेकिन उसकी तामील नहीं हो पा रही है। लिहाजा इस न्यायालय को विश्वास हो गया है कि उसकी तामील साधारण तरीके से की जानी असम्भव है तथा प्रार्थिया ने प्रार्थना-पत्र दिया कि उक्त प्रतिवादी की तामील राजपत्र के द्वारा करवाई जाए। अतः उक्त प्रतिवादी सहजराम को इस इश्तहार द्वारा सूचित किया जाता है कि यदि उसे इस तकसीम में किसी प्रकार की आपत्ति हो तो वह असालतन या वकालतन इस न्यायालय में दिनांक 13-12-2010 को हाजिर आकर प्रस्तुत कर सकता है। हाजिर ना होने की सूरत में कार्यवाही एकतरफा अमल में लाई जाएगी तथा तकसीम भूमि कर दी जाएगी।

आज दिनांक 15-11-2010 को हमारे हस्ताक्षर तथा मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम वर्ग,
अर्की, जिला सोलन, हिमाचल प्रदेश।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी ऊना, तहसील व जिला ऊना,
हिमाचल प्रदेश

श्री सोडी

बनाम

आम जनता।

दरखास्त जेर धारा 13 (3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

श्री सोडी पुत्र श्री केहर सिंह, निवासी डंगोली, तहसील ऊना, जिला ऊना ने इस अदालत में दरखास्त दी है कि उसके पुत्र नवजोत का जन्म गांव डंगोली में दिनांक 18-3-2005 को हुआ था, परन्तु इस बारे पंचायत के रिकार्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिए जाएं।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त जन्म पंजीकरण होने बारे कोई उजर/एतराज हो तो वह दिनांक 22-12-2010 को सुबह 10.00 बजे अधोहस्ताक्षरी के समक्ष असालतन व वकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त जन्म का पंजीकरण करने के आदेश दे दिए जाएंगे।

आज दिनांक 22-11-2010 को हस्ताक्षर मेरे व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, तहसील व जिला ऊना, हिमाचल प्रदेश।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी ऊना, तहसील व जिला ऊना,
हिमाचल प्रदेश

श्री धनपत राये

बनाम

आम जनता।

दरखास्त जेर धारा 13 (3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

श्री धनपत राये पुत्र श्री दाता राम, निवासी खानपुर, तहसील ऊना, जिला ऊना ने इस अदालत में दरखास्त दी है कि उसकी पुत्री चरनजीत कौर का जन्म गांव खानपुर में दिनांक 4-5-2005 को हुआ था, परन्तु इस बारे पंचायत के रिकार्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिए जाएं।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त जन्म पंजीकरण होने बारे कोई उजर/एतराज हो तो वह दिनांक 22-12-2010 को सुबह 10.00 बजे अधोहस्ताक्षरी के समक्ष अदालत व वकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त जन्म का पंजीकरण करने के आदेश दे दिए जाएंगे।

आज दिनांक 22-11-2010 को हस्ताक्षर मेरे व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—

तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, तहसील व जिला ऊना, हिमाचल प्रदेश।

DEPARTMENT OF PUBLIC WORKS

NOTIFICATION

Shimla-2, the 7th December, 2010

No. PBW(B)3(6)7/93.—Whereas M/S A.Power Himalayas Ltd., Regency Complex Paonta Sahib, Distt. Sirmour, PIN-173025 has entered into an agreement on 18th January, 2003 with the Government of Himachal Pradesh through Pr. Secretary, Department of Tourism, Govt. of Himachal Pradesh to construct the Aerial Ropeway-cum-Ski Centre Project on a Build, Own, Operate and Transfer (“BOOT”) basis at Solang Nallah, Tehsil Manali, Distt. Kullu (HP);

Whereas the said company has framed draft bye-laws under section 27 of the Himachal Pradesh Aerial Ropeways Act, 1968 and the same were published by them in pursuance of section 27(3) of the Himachal Pradesh Aerial Ropeway Act, 1968 (Act No. 7 of 1969) in two daily news papers namely, the Tribune and Apka Faisala on 10th November, 2010, for information of the general public;

And whereas the Inspector of Aerial Ropeways, Kullu has scrutinized the above draft bye-laws as per the requirement of rule 12 of the Himachal Pradesh Aerial Ropeways Rule, 1972 and forwarded the same to the State Government for approval and publication in the Official Gazettee.

Now, therefore, the Governor Himachal Pradesh in exercise of powers conferred by sub section (3) of section 27 of the Act *ibid* is pleased to confirm/approve the following, bye-laws framed by Ski Himalayas Ropeways Pvt. Ltd; an S.P.V of A Power Himalayas, namely:—

1. Short title and Commencement.—(1) These bye-laws shall be called the Bye-Laws of Solang Ropeway-cum-Ski Centre, Ski Himalayas Ropeway Pvt. Ltd, an SPV of A Power Himalayas Ltd., at Solang Nallah of Tehsil Manali, Distt. Kullu, Himachal Pradesh bye-laws, 2010.

(2) These shall come into force from the date of their publication in the Rajpatra, Himachal Pradesh.

2. Definitions.—(1) In these bye-laws, unless there is any thing repugnant in the subject or context,—

- (a) “Act” means the Himachal Pradesh Aerial Ropeways Act, 1968 (Act No. 7 of 1969);
- (b) “Cabin” means carrier used for carrying the passengers on ropeway; and
- (c) “promoter company” means M/S A. Power Himalayas Ltd., Regency Complex, Paonta Sahib, Distt. Sirmour, Himachal Pradesh.

(2) The words and expressions used in these bye-laws but not defined shall have the meanings respectively assigned to them in the Act and rules framed there under.

3. Manner and other conditions to regulate.—The manner and other conditions to regulate the operation of ropeways shall be as under:—

- (a) the speed of the aerial ropeways shall be upto 6 meters per second.
- (b) The maximum weight of passengers including pets to be carried in each cabin shall not exceed 640 Kg.
- (c) The maximum number of persons allowed to be carried in each cabin shall be 8 adults.

Explanation.—(i) For the purpose of this bye-law, 2 children above the age of 3 years upto the age of 12 years shall be counted as one adult and

- (ii) Children below the age of 3 years shall not be counted for the purpose of maximum number of passengers to be carried in each cabin.
- (d) the passengers shall not be allowed to carry the arms and ammunition as defined in the Arms Act, 1959 and the alcohols/intoxicants while traveling on the ropeways.
- (e) the passengers shall not be allowed to eat, drink or smoke while traveling on the ropeway; and
- (f) the promoter company may refuse any passenger to ride the cabin if any employee of the company finds that any person is under the influence of any intoxicant or is otherwise physically/mentally unfit to travel on the ropeway or apprehend any danger to himself or the co-passengers or employee(s) of the promoter company.
- (g) The promoter company shall allow passengers to carry small luggage like brief case or hand bags with them free of charge.
- (h) The promoter company shall not be responsible for loss of personal belongings of the passengers and they will themselves take care of their belongings during travel on the aerial ropeway.
- (i) If the employee(s) of the promoter company have any doubt on any passenger travelling on the aerial ropeway that he is carrying some goods which are prohibited as per bye-law 3(d), the employee of the promoter company shall be allowed by the passenger to search his luggage.
- (j) During the maintenance/break down period of aerial ropeway, the promoter shall inform the Inspector Ropeways and public by advertising in the leading newspapers of the region and local newspapers in respect of the closure and re-opening of the aerial ropeway.

- (k) Ticket once sold will not be re-fundable under normal circumstances. The refund will only be granted in case of any reason beyond the control of the promoter company or due to fault on their part.
- (i) The time of alighting at upper/lower terminal stations shall be exhibited on the tickets.
- (m) Ticket counter and sale of tickets shall normally be closed one hour before the closing time of aerial ropeway operation schedule and the same shall be mentioned in the notice board at the counter.
- (n) The promoter company shall make the adequate arrangements for keeping cabins and reception area clean and shall provide proper lighting, toilet, drinking water facilities at upper and lower stations.
- (o) The promoter company shall provide a special chair at upper and lower stations to help the handicapped persons in embarking and disembarking.
- (p) The promoter company shall make provision for issuing out-of turn Ticket to handicapped persons, so that they are not required to stand in normal queue.
- (q) The promoter company shall provide Fire-Fighting equipments at both stations
- (r) The promoter company shall make adequate arrangements for parking of vehicles of passengers traveling on this ropeway.
- (s) Passengers shall not be allowed to resort to any activity causing nuisance to public in the premises of the ropeway and while travelling in the cabins.
- (t) The passengers as well as the promoter shall abide by the provisions of these bye-laws and the Act.
- (u) The company reserves the right of admission.

4. Qualifications of staff.—The staff employed for running and maintenance of aerial ropeways and their qualification shall be as under:—

(1) Mechanical Engineers:

At least 3 having Diploma or above from recognized Institute/Polytechnic;

(2) Electrical Engineer :

At least 3 having Diploma or above from recognized Institute/Polytechnic;

(3)Electronic Engineer:

At least 3 having Diploma or above from recognized Institute/Polytechnic;

(4) Mechanical Trade Man :

At least 3 having Diploma from ITI or above from the State/Central Government recognized Institute in trade.;

(5) Electrical Trade Man:

At least 3 having Diploma from ITI or above from the State/Central Government recognized Institute in trade.

(6) Customer Care Executives :

At least 5 who are Graduate in any stream from State/Central Government recognized institute.

(7) Marshals:

At least 10 who have passed 10th or above from the State/Central Government recognized institute.

(8) Ground Handling Staff:

At least 10 who are 10+2 from the State/Central Government recognized institute.

5. Conduct of Promoter's Company employee.—(1) Every employee of the Promoter's Company shall behave properly and show courtesy to the passengers.

(2) Every employee of promoter's Company shall strictly abide by any law relating to intoxication within the area of operation of the aerial ropeway and during the course of his duties.

(3) Every employee of the promoter company shall abide by the provisions of these byelaws and also ensure that the bye-laws are not violated by any person.

(4) In case of breach of bye-laws by the promoter's servant the company shall forfeit a sum not exceeding one month pay of the servant responsible for the act and may take further suitable action under the provision of company bye-laws.

6. Timing of operation of aerial ropeway.— The aerial ropeway shall normally be operative for 24 hours every day or as per the time schedule duly approved by the Inspector, Aerial Ropeway which shall be communicated to District Administration and also displayed on the notice board at the aerial ropeway station.

7. Power to be used for operation of the Aerial Ropeway.— The electrical power shall be used for operating the aerial ropeway. In case of break down of electrical power supply, the aerial ropeway shall be operated with the diesel Engine back up.

8. Compensation in case of accident.— In case of death or permanent disablement of person(s) resulting from any accident arising out of the use or operation of the aerial ropeway, the promoter company shall be responsible to pay compensation in respect of such death or disablement through insurance company. The minimum amount of compensation shall be payable as under:—

- a. Children below 12 years: Rs. 50,000/-
- b. Lady passenger: Rs. 1,00,000/-
- c. Gents passenger: Rs. 5,00,000/-
- d. Foreign passenger: Rs. 10,00,000/-

(2) For minor injuries during the aerial ropeway journey, normal first aid shall be provided by the employee of Promoter Company.

9. Penalty for violation of bye-laws.—(1) Any person who contravenes any of the provisions of these bye-laws shall be liable to fine which may extend to any sum not exceeding fifty rupees.

(2) Passenger(s) shall follow the directions of the Ground Staff for embarkation, disembarkation and riding in the cabins for safety purposes. Passengers shall not be allowed to enter, restricted/no entry area and any violation of the safety rules shall be the responsibility of the passengers and for such violation action may be taken by the promoter under sections 34, 35, 36 and 37 of the Act.

By order,
Sd/-
Pr. Secretary(PW).

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, 28th October, 2010

No. Shram (A) 7-1/2005 (Award).—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court Shimla of the following cases on the website of Labour & Employment Department:-

Sr. No.	Case No.	Title of the Case	Date of Award
1.	44/2010	President/General Secretary, R.H. Laboratories Vs M/S R.H. Laboratories, Industrial Area, Poanta Sahib, District Sirmour, H.P.	06-09-2010
2.	8/2010	Mehar Chand Vs Pawan Kumar, Contractor, Becon Business Service Pvt. Ltd., Parwanoo, Solan.	03-09-2010
3.	106/2009	Ms. Monica & Ors. Vs M.D. M/S Super Cassettes Industries Ltd., Baddi, Solan.	01-09-2010
4.	124/2006	Naresh Kumar Vs The Factory Manager, M/S Sinar Bulbs & Tubes Pvt. Ltd., Barotiwala, Solan.	06-09-2010
5.	59/2010	Dharam Singh Vs M/S J.B. Industries, Nalagarh, Solan.	15-09-2010
6.	97/2007	Ramesh Chand & Ors. Vs Pr. Secretary(IPH) to the Govt. of H.P. & Ors.	09-09-2010
7.	115/2006	Netar Singh & Ors. Vs DFO, Rajgarh, Sirmour.	10-09-2010
8.	145/2007	Tikhu Ram Vs XEN, (Electrical), HPSEB, Ram Shehar, District Solan, H.P. & Ors.	14-09-2010
9.	10/2009	Naratu Ram Vs DFO, Shimla.	01-09-2010
10.	111/2009	Harish Kumar Vs MD, M/S Saini Hair Products Pvt. Ltd., Baddi, Solan.	15-09-2010
11.	80/2007	Roshan Lal Vs Divisional Manager, H.P. State Forest Corporation Ltd., Chopal, Shimla.	07-09-2010
12.	36/2009	Jagdish Verma Vs MD, M/S Indus Cosmeceuticals, Shoght, District Shimla.	20-09-2010
13.	27/2005	Raj Preet Singh Vs MD, M/S Surya Pharmaceuticals Ltd., Baddi, Solan.	10-09-2010
14.	59/2008	Joginder Dutt Vs Secretary, HPSEB, Shimla-4 & Ors.	15-09-2010
15.	94/2010	Naresh Kumar Vs Total Health Care, Kasauli Road, Parwanoo, Solan.	21-09-2010
16.	62/2010	Rajman Singh Negi Vs XEN, HPSEB, Kaza.	21-09-2010
17.	109/2003	Lokesh Kumar Vs M/S Sury Pharmaceutical Ltd., Baddi, Solan.	10-09-2010
18.	69/2006	Som Dutt Sharma Vs The Factory Manager, M/S Sidhartha Super Spinning Mills Ltd., Nalagarh, Solan.	15-09-2010
19.	82/2007	Rakesh Kumar Vs The Director, Technical Education, Sunder Nagar, H.P. & Ors.	09-09-2010
20.	34/2008	Madan Singh Vs The MD, M/S Sigma Vibra Coustic(India) Ltd., Mohali, Punjab.	15-09-2010
21.	11/2007	Raj Kumar Vs The MD, H.P. State Forest Corporation, Shimla-9 & Ors.	07-09-2010
22.	47/2008	Chet Ram Vs XEN, HPSEB(Electrical), Rampur Bushahr, Shimla.	15-09-2010
23.	84/2007	Krishan Lal Vs MD M/S Modesto Polymers, Pvt. Ltd., Parwanoo, Solan.	30-09-2010
24.	15/2010	Vakila Begum Vs The Factory Manager M/S Accura Care Pharmaceuticals Pvt. Ltd., Kala Amb, Nahan.	30-09-2010
25.	124/2007	Nirmal Singh Vs The Collector of Forest Settlement Solan & Sirmour.	08-09-2010
26.	126/2007	Shyam Singh Vs The Collector of Forest Settlement Solan & Sirmour.	08-09-2010

By order,
Sd/-

ACS (Labour & Employment).

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 84 of 2007.
Instituted on 7.9.2007.
Decided on 30.9.2010.

Krishan Lal S/o Shri Bhalkhu Ram R/o Village kared Dadhayan, P.ODhalwan, Tehsil Sarkaghat, District
Mandi HP.

. .Petitioner.

Vs.

The Managing Director M/s Modesto Polymers, Pvt. Ltd., Plot no.13, Sector -5 Parwanoo, District Solan, HP.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Nirnajan Verma, Advocate.

For respondent : Already exparte.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether the termination of services of Shri Krishan Lal s/o Shri Bhalku Ram workman by the Managing Director M/s Modesto Polymers, Pvt. Ltd., Plot no.13, Sector -5 Parwanoo, District Solan, HP w.e.f. 17.2.2006 without holding any domestic enquiry and without complying the provisions of the Industrial disputes Act, 1947 is proper and justified/ if not, what relief of service benefits, and amount of compensation, the above aggrieved workman is entitled to?”

2. Briefly, the case of the petitioner is that since November, 1993, till Feb., 2006, he had been working as an electrician to the entire satisfaction of the respondent but his services were dispensed with without any enquiry or paying retrenchment compensation and also notice. Since, his services were terminated in contravention of the provisions of the Industrial disputes Act, 1947 (hereinafter referred as Act), he deserves to be reinstated alongwith all the consequential benefits.

3. Since, the respondent had failed to appear on having been served, he was proceeded against exparte as per order dated 11.6.2009.

4. Although, the petitioner was afforded opportunities to lead exparte evidence, but he failed to lead any evidence and consequently, his evidence was closed by the order of the court.

5. For the failure of the petitioner to have led evidence that his services have been terminated by the respondent in contravention of the provisions of the Act or without holding domestic enquiry, there is no material, whatsoever, which could substantiate his contention as made in the statement of claim that his services had been terminated w.e.f. 17.2.2006, either in contravention of the provisions of the Act or without holding domestic enquiry. Consequently, I have no hesitation in holding that the claim of the petitioner is not proved and accordingly, this reference is answered against him. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today this day of 30th September 2010.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

Ref no. 97 of 2007.
Instituted on 7.9.2007.
Decided on. 3.9.2010.

1. Ramesh Chand S/o Shri Prem Singh R/o Vilalge Khurya, P.O Thanakasoma, Tehsil, Paonta Sahib, District Sirmor, HP. **Date of engagement, April/1986 and date of disengagement, Jan., 1988.**
2. Shadi Ram So Shri Albel Singh R/o Village Dhaun, P.O Rama, Tehsil Nahan, District Sirmor, HP. **Date of engagement, 8/1987 and date of disengagement, Nnovember, 1995.**
3. Maha Singh S/o Shri Kripa Ram R/o VPO Bagthan, Tehsil Nahan District Sirmour, HP. **Date of engagement 1984. Date of disengagement, December, 1988.**
4. Roop Singh S/o "Shri Dhonku Ram R/o Village Jablog, P.O Sainj, Tehsil Sangrah, District Sirmour, HP. **Date of engagement, 1986 and date of disengagement 4/1987.**
5. Gopal Singh S/o Shri Bhadur Singh R/o Village Jablog, P.O Sainj, Tehsil Sangrah, District Sirmor, HP. **Date of engagement, 9/1986 and date of disengagement December, 1987.**
6. Lekh Ram S/o Shri Jia Ram R/o VPO Birda, Tehsil Nahan, District Sirmor, HP. **Date of engagement 8/1985. Date of disengagement 6/1987.**
7. Om Parkash S/o Shri Jangesar Singh R/o Vilalge Maijhotali, P.O Dinger Kinner via, Bagthan Tehsil Pachad, District Sirmour, HP. **Date of engagement 1/1985. Date of disengagement December, 1987.**
8. Balvinder Singh S/o Shri Jodhbir Singh R/o Village Chawahan, P.O Jamta, Tehsil Nahan, District Sirmour, HP. **Date of engagement 11/1987. Date of disengagement 10/1988.**
9. Balbir Singh S/o Shri Sukhdarshan Singh R/o Village Dinger Kinner, Tehsil Pachhad, District Sirmour, HP. **Date of engagement 7/1984. Date of disengagement March, 1992.** . .Petitioners.

VS.

1. State of HP, through Principal Secretary (IPH) with H.Q at Shimla.
2. The Executive Engineer, I&PH Division Nahan, District Sirmour, HP. . .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioners: S/Shri O.P Sharma and Anil Chauhan, Advocates.
For respondent: Shri Jagdish Kanwar, Ld. DDA

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:
 - "2. Facts in brief are that the petitioners were engaged on daily wage basis in IPH Division, Nahan in the months and years as mentioned in the head note and that they completed 240 days in each calendar year. However, their services had been disengaged in the months and years as also mentioned in the head note, in violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act), without notice and compensation. Further, persons junior to them are still in service. Since, their services were disengaged without complying with the provisions of the Act, they deserves to be reinstated with all the consequential benefits.
 3. The petition has been contested on having raised preliminary objections including maintainability and barred by limitation. On merits, it has been pleaded that the petitioners had worked as daily rated beldars in the years and also for the days as mentioned in the reply but it has been specifically denied that their services were disengaged/terminated. In fact, they had abandoned their jobs and did not turn up to do the work.
 4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.
 5. Pleadings of the parties gave rise to the following issues which were struck on 30.9.2010.
 1. Whether the termination of the petitioners by the Executive Engineer I&PH Nahan, is improper and unjustified without complying the provisions of ID Act, 1947 as alleged? . .OPP.
 2. If issue no.1 is proved in affirmative, to what relief, the petitioners are entitled to and since when? . .OPP.

3. Whether the claim petition is not maintainable as alleged? . .OPR.

4. Relief.

6. Before I proceed further, it is pertinent to mention that out of nine petitioners, only three namely Ramesh Chand (petitioner no.1), Om Parkash (petitioner no.7) and Balbir Singh (petitioner no.9) appeared in the witness box in support of their respective claims. The *Hon'ble Supreme Court in 1999 (2) Current Civil Cases 171 (SC), Ishwar Bhai C. Patel Vs. Harihar Bohara & another*, has held that:

“if a defendant does not enter the witness box to make a statement on oath in support of the pleadings set out in the written statement, an adverse inference would arise that what he stated in the written statement was not correct”.

7. Applying the ratio of the aforesaid case law, I have no hesitation in holding that as far as petitioners S/Shri Shadi Ram, Moha Singh, Roop Singh, Gopal Singh, Lekh Ram and Balvinder Singh are concerned, **for their failure to have stepped into the witness box in support of their respective claims, on this score, their claims deserves to be dismissed/disallowed.**

8. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Accordingly in Yes.

Issue no.2 petitioner no. 1 (Ramesh Chand), petitioner no.7 (Om Parkash and petitioner no. 9 (Balbir Singh) are entitled to reinstatement in service with seniority and continuity but without back wages.

Issue no. 3 No.

Relief. Reference answered accordingly in favour of the petitioners no. 1, 7 & 9 and against the respondents and dismissed against other petitioners, per operative part of award.

Reasons for findings

Issue No. 1

10. Shri Ramesh Chand (petitioner no.1) while appearing in the witness box as PW-3, has stated that in the month of April, 1986, he was engaged as daily wage beldar in the department of IPH and remained as such till April, 1988, in which month, his services were terminated without notice and compensation. In every calendar year, he had completed 240 days. He had not abandoned the job. Workmen junior to him are still in service but he cannot tell their names. In the cross examination, he has stated of not having filed any document to show that, in every year, he had completed 240 days till his termination but denied of having abandoned the job, on his own.

11. It is true that Shri Ramesh Chand (petitioner No.1) has not filed mandays chart to prove that in the twelve calendar months preceding his termination, he had completed 240 days but the respondent has brought, on record, his mandays chart, which is Ex. RE-1. Its perusal goes to show that in the year, 1987, he (Shri Ramesh Chand) had worked for 337 days and in the year, 1988 (1/1988), he had worked for 14 days. From this document, it stands proved that in the twelve preceding months from the date of his alleged termination, he had completed 240 days. It has been specifically stated by this witness (PW-3) that he had not abandoned his job and that his services were terminated without notice and compensation. Since, it stands proved, on record, that Shri Ramesh Chand (Petitioner no.1), had completed 240 days in the twelve calendar months preceding his termination, it was required of the respondents to have complied with the provisions of section 25F of the Act by giving notice and compensation to him. Since, the requirements of said section were not complied with, the alleged termination of Ramesh Chand (petitioner no.1) is held to be illegal and unjustified.

12. Shri Om Parkash (petitioner no.7) has appeared in the witness box as PW-2. According to him, he was engaged as daily wage beldar in the month of May, 1985 in the department (IPH) and remained as such till April, 1987, in which month, his services were terminated without notice and compensation. In each calendar year, he had completed 240 days. He had not abandoned the job. Juniors to him namely Ramesh Singh and Amar Singh etc. are still in service. In the cross examination, he stated of not having filed any such document which could go to show that Ramesh Singh and Amar Singh are juniors to him and that they are still in service. Similarly, he has also not filed any documents to show that in every year, he had completed 240 days, till his termination.

13. Undoubtedly, Shri Om Parkash (PW-2) has not filed his mandays chart in support of his contention to have completed 240 days in the twelve calendar months preceding his termination but the respondent has brought, on record, his mandays chart Ex. RE-VI. Its perusal goes to show that he had been engaged as beldar on 9.5.1985 and in the year, 1985, he had worked for 53 days. Thereafter, in the year, 1986, he worked for 212 days and in the year, 1987 i.e upto 4/1987, he worked for 117 days. From this document, it is proved that he had completed 240 days in the twelve calendar months preceding his termination.

14. It has been specifically stated by Om Parkash (PW-2) that S/Shri Ramesh Singh and Amar Singh, who are junior to him, are still in service. When regard is given to the statement of Shri Santosh Kumar (RW-1), it is revealed that he also admits this fact. Thus, from the evidence, which has been led by Om Parkash (petitioner no.7), it also stands proved that his juniors are still in service. In this way, he succeeds in proving the violation of the provisions of section 25G & H besides that of section 25F of the Act, as per which, the respondent was required to issue notice and to pay retrenchment compensation to him. For the violation of the aforesaid sections, it is held that the termination of Shri Om Parkash (petitioner no.7) is illegal and improper.

15. Shri Balbir Singh (petitioner no.9), has appeared in the witness box as PW-1. According to him, he was engaged as daily wage beldar in the month of December, 1987, in the department of IPH and remained as such till 13.3.1997 when his services were terminated without notice and compensation. In every calendar year, he had completed 240 days and that he did not abandon the job. Workmen juniors to him, of whom one is Shri Babu Ram, are still in service. In the cross examination, he has stated of not having filed any document to show that Babu Ram is junior to him and still in service and further that he had worked for 240 days in every calendar year till his termination.

16. No doubt, Shri Balbir Singh (PW-1) has not filed his mandays chart but the respondent has brought, on record, his mandays chart, which is Ex. RE-IX. Its perusal goes to show that initially, he was engaged in the year, 1984 (12/1984) in which year, he worked for 31 days. This chart further makes it clear that in the year, 1985, he worked for 335 days, 1986, 334 days, 1987, 212 days, 1988, 274 days, 1989, 350 days, 1990, 276 days, 1991, 319 days, 1992, 268 days and 1993 42 days (3/1993). When the statement of Shri Balbir Singh (PW-1) is considered on the face of this document Ex. RE-IX, it stands proved that he too had completed 240 days in the twelve calendar months preceding his termination. In his statement, it has also come that Shri Babu Ram is junior to him and his such version has been admitted by Shri Santosh Kumar (RW-1). Thus, from the evidence, which has come, on record, it also stands duly proved that the services of Balbir Singh (petitioner no.9) were terminated in violation of the provisions of section 25F, G & H of the Act and for this reason, the same is held to be illegal and improper. I have already observed, above, that since, the other petitioners have failed to appear in the witness box, in support of their respective claims, this court is unable to hold that their services too were terminated in violation of the provisions of the Act. Consequently, by holding that the services of the *petitioner no.1 (Ramesh Chand), petitioner no.7 (Om Parkash) and petitioner no.9 Balbir Singh* were terminated in an illegal and unjustified manner in violation of the provisions of the Act, my answer to this issue is in "Yes" accordingly.

Issue No. 2

14. Since, the petitioners have raised this Industrial Dispute after a long time from the date of their disengagements, I am of the view that they do not deserve to be granted back wages. Moreover, *It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla* that "full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry".

Consequently, in view of the law laid down by the Hon'ble Apex Court, the petitioners are held not to be entitled for back wages. However, since their services had been terminated in contravention of the provisions of the Act, I hold that the petitioners (petitioners no. 1, 7 & 9) are entitled to reinstatement in service with seniority and continuity but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No. 3.

15. It is not understandable as to why the claim petition is not maintainable, particularly, when it has been filed in pursuance to the reference made to this Court by the Labour Commissioner. Apart from it, the learned DDA for respondent could not explain as to why this claim petition is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claims of the *petitioners no.1 (Ramesh Chand), petitioner no.7 (Om Parkash) and petitioner no.9 (Balbir Singh)* are allowed and it is ordered that they (said petitioners) be reinstated in service, with seniority and continuity but without back wages. The claims of the other

petitioners stand dismissed. Consequently, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 3rd September, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 106 of 2009.
Instituted on 11.4.2008.
Decided on 7.8.2010.

Ms. Monica, Rekha & other 74 workers of M/s Super Cassettes Industries Ltd. Baddi, District Solan, HP. . .Petitioner.

VS.

The Managing Director, M/s Super Cassettes Industries Ltd. Baddi, District Solan, HP. . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: None.
For respondent: Shri Rahul Mahajan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the demands raised by the group of workmen through their authorized representative, dated 1.9.2008 (copy enclosed) before the Managing Director, M/s Super Cassettes Industries Ltd. Baddi, District Solan, HP is legal and justified? If yes, what relief including compensation, seniority, annual increment, classification of grades and percentage of house rent they are entitled to.”

2. At the very outset, I would like to point out that although, the petitioners were afforded many opportunities to file statement of claim but they did not file the same and ultimately, on 1.9.2010, when this case/reference was fixed for filing statement of claim, none appeared for the petitioners and for this reason, this court proceeded with to decide this reference on the basis of material, which so ever available, on the record. It is highlighted that through their Authorized Representatives, Monica & Rekha, the workmen (74) workers, of M/s Super Cassettes Industries Ltd. Baddi, District Solan, HP, filed a demand notice to the Managing Director, M/s Super Cassettes Industries Ltd. Baddi, District Solan, HP, wherein, various demands were raised as per their mention given in the demand notice. Since, during conciliation proceedings, the matter/demands could not be reconciled, a reference was made to this Court, by the appropriate government for adjudication. For the failure of the petitioners to have filed statement of claim and further to lead evidence in support of their such demands as raised through demand notice, there is no material, whatsoever, before this Court which may go to show that the demands of the petitioners are legal & justified. It is to be noted that that when the respondent had been asked by this Court through counsel to file its version, in respect of the reference having been made to this Court, the Ld. Counsel stated that no version/reply is intended to be filed, since, the petitioners have not filed any statement of claim. Consequently, for want of statement of claim, having been not filed by the petitioners despite having afforded several opportunities and further there is no evidence in support of the demands which have been made by the petitioners through their demand notice, I have been left with no alternative but to answer this reference in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today this day of 1st September, 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA CAMP AT SOLAN

Ref no. 109 of 2003.
Instituted on 25.4.2003.
Decided on. 10.9.2010.

Lokesh Kumar S/o Shri Ghatdu Ra, C/o Shri Raj Kumar R/o Village Suraj Majara, P.O Baddi, Tehsil Nalagarh, District Solan, HP. .Petitioner.

VS.

1. The Managing Director M/s Sury Pharmaceutical Ltd., Baddi, District Solan, HP. .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.
For respondent: Shri Narinder Sharma, Advocate

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Shri Lokesh Kumar w.e.f. 11.9.2001 by the Managing Director M/s Sury Pharmaceutical Ltd., Baddi, District Solan, HP, without any notice, chargesheet and enquiry and without any compensation is proper and justified? If not, what relief of compensation and service benefits, the above workman is entitled to”?

2. In nutshell the case of the petitioner is that he had entered in the employment of respondent company in the month of October, 1998 and continued to remain as such till 11.9.2001, when he was orally stopped to enter the company premises. In this manner, his services had been terminated arbitrarily and lastly his wages were Rs.2,050/- per month. In each calendar year, during the tenure of his service, he had completed 240 days. Prior to his termination, he had neither been served with any notice nor paid compensation. It is further averred that juniors to him were retained in service. Since, his services were terminated in contravention of the provisions of section 25N, 25G & H of the Industrial Disputes Act (hereinafter referred as Act), he deserves to be reinstated, in service, with all the consequential service benefits including back wages.

3. The petition has been contested on having raised various preliminary objections, including maintainability. On merits, it has been asserted that since, the petitioner was involved in the theft and pilferage of 6.5 Kilogram of medicine i.e Amoxicillin, he had been issued show cause notice, chargesheet, which he had replied. Thereafter, a domestic enquiry was got conducted against him from Shri Swaran Kumar Arya, in an impartial manner and as per the principles of natural justice. In the enquiry, so got conducted against him, the charges against him stood duly proved and that he had also been afforded sufficient opportunities to put forth his case and to cross examine the witnesses of the management. Since, he had been found to have committed theft, which is a major misconduct, on the basis of the enquiry and on having been issued 2nd show cause notice, his services were dispensed with. It has been specifically maintained that the copy of the enquiry report had been received by the petitioner. In this way, there had been no violation of the provisions of the principles of natural justice. Apart from this, a criminal case vide FIR no. 100/2001, dated 5.9.2001, registered at Police Post Baddi, has been pending against the petitioner, in the Court of Ld. Judicial Magistrate, Nalagarh and its trial is going on. Further, the petitioner has concealed this fact regarding his working in some other Pharmaceutical company, at Baddi, where he has been earning more than Rs. 8,000/- to 10,000/- per month. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 18.11.2005.

1. Whether the service of the petitioner was illegally terminated by the respondent w.e.f. 11.9.2001 without complying with the provisions of I.D Act, 1947? If so, its effect? . .OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to? . .OPP.
3. Whether the present petition is not maintainable in view of section 2 (oo) (bb) of I.D Act, 1947? . .OPR.
4. Relief.

6. I have heard the learned AR for the petitioner and Ld. counsel for the respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	Accordingly in yes.
Issue no.2	Entitled to reinstatement with seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue No. 1

8. Although, in his petition, it has not been stated by the petitioner that against him a domestic enquiry was got conducted by the respondent but when regard is given to the reply filed by the respondent, it is quite apparent, on record, that since, there had been an allegation against the petitioner to have been involved in the theft and pilferage of 6.5 Kilogram of medicine i.e Amoxicillin, an impartial enquiry had been got conducted against him by Shri Sawaran Kumar Arya, who conducted the same in fair and just manner by following the principles of natural justice. Since, the charges against the petitioner were found to have been proved, his services were dispensed with after having made him available the copy of the report alongwith 2nd show cause notice. It is also highlighted that a criminal case was also got registered against the petitioner which is stated to be pending in the court of Ld. Judicial Magistrate, Nalagarh. When, regard is given to the rejoinder, filed by the petitioner, it is revealed that he admits this fact that an enquiry was got conducted against him but the same was not fair for the reason that it was held against his back and that even, the report of the enquiry was not supplied to him. It has further been maintained that in the criminal case, which he had faced/defended before SDJM, Nalagarh, he was acquitted by the Ld., Court.

9. From the aforesaid facts, it is quite clear, on record, that the services of the petitioner had been dispensed with not for the reasons as alleged by the petitioner, but on the basis of a domestic enquiry, which was got conducted against him. Now, this Court has to ascertain whether the domestic enquiry, so got conducted against the petitioner, is in violation of the principles of natural justice or not.

10. While appearing in the witness box as PW-1, the petitioner has supported his case, on all material particulars, including that he had continued to remain in service w.e.f. October, 1998 till 11.9.2001. In his statement, it has also come that in order to demand bonus, he had written a letter Ex. PA to the Managing Director of the company, with the consent of all the workers, and that for this reason, the Manager of the company had got annoyed against him and lodged a false report of theft with him and thereafter, he was put under suspension, vide Ex. PB. Chargesheet Ex. PD had also been served upon him through letter Ex. PC. Vide Ex. PE, he had replied the chargesheet. In criminal case, which had been got registered against him, by the management of the company, he had faced a criminal trial and vide copy of judgment Ex. PF, he was acquitted from the charges. In the cross examination, he admitted that the demand had been raised, before the management, by so many other workers, including him and that the FIR was against 3/4 workers. He further admitted that after the FIR, an enquiry was initiated against him and he was supplied with the chargesheet but explained that no enquiry was held. He admitted that his services were terminated after due enquiry. He further admitted that FIR and the chargesheet against him were in respect of the allegations of theft.

11. Shri Ambrish Sharma (RW-1) has supported this fact that on 1.9.2001, the petitioner had been caught red handed while committing theft and that vide Ex. R-1/A (objected to), he had apologized to the management, on 2.9.2001. An FIR no. 100/2001 dated 3.9.2001, was got registered at Police Post, Baddi and thereafter vide letter dated 12.9.2001, the copy of which is Ex. R-1/B, the petitioner was put under suspension on the basis of preliminary enquiry, which had been got conducted against him. Thereafter, vide letter dated 24.9.2001, the copy of which is Ex. R-1/C, he had been served with the chargesheet and his reply was also sought but the same was not filed despite a reminder/letter, the copy of which is Ex. R-1/D. Upon this, another letter/reminder dated 10.11.2001, the copy of which is Ex. R-1/E, was sent to him through registered post but again he failed to file any reply. Thereafter, vide letter dated 29.11.2001, an enquiry officer was appointed and the petitioner was duly informed about it, vide mark R/1. While joining the enquiry, he (petitioner) had objected regarding the fairness of enquiry officer, vide letter dated 3.1.2001, which was replied vide letter dated 10.1.2002, the copy of which is Ex. R-1/F. Thereafter, the enquiry was conducted and in the enquiry, he was found guilty since all the charges against him stood proved and that the copy of enquiry report is Ex. R-1/J. Thereafter, his services were terminated. On being cross examined, he (RW-1), has denied the case of the petitioner on all material counts.

12. Shri Swaran Kumar Arya (RW-2), had been appointed as an enquiry officer by the management of the respondent company vide letter dated 29.11.2001. According to him, he had sent letter dated 14.12.2001, the copy of

which is Ex. R-1/A, to both the parties in order to put their presence on 25.12.2001 before him and on having received the same, both the parties had appeared. Both the parties were told regarding the enquiry proceedings and thereafter, he adjourned/deferred the same for 2.1.2002, for recording the evidence of the witnesses of the respondent management. On 2.1.2002, both the parties had appeared before him and on that date, the management representative had handed over the list of witnesses, the copy of which was also supplied to the petitioner. After that, the enquiry was fixed for 14.1.2001 but the petitioner did not appear. On behalf of the management, Shri Anil Chauhan (MR) was present and that since, the petitioner had failed to appear despite knowledge, he was proceeded against exparte. On having recorded the exparte evidence, he had submitted his report to the management on 20.2.2002. In the cross examination, he denied of not having sent Ex. R-2/A to the petitioner and that since, the petitioner was at his native place, for this reason, he did not appear on the aforesaid dates. Before conducting exparte proceedings, no notice had been sent to the petitioner. Regarding the petitioner, having been ordered to be proceeded exparte, he has not brought any such proceedings before this Court. The enquiry had been conducted at Baddi Plant but cannot recollect the address of the plant where it had been conducted. He denied of having prepared a false report at the instance of the management.

13. As far as the receiving of the chargesheet is concerned, the petitioner has not disputed this fact. This clearly goes to show that the copy of chargesheet had been duly served upon him. On the record, the respondent has brought letters, as aforesaid, in order to prove that despite having been afforded three opportunities, the petitioner had failed to file reply to the chargesheet. In the statement of Swaran Kumar (RW-2), it has come that he had issued notice to both the parties and that on 25.12.2001, they had put their presence before him. At this stage, I would like to point out that this witness (RW-2) has not brought, on record, the proceedings of the enquiry which could have proved this fact that he (RW-2) had told them regarding the procedure, which he was to follow, to conduct the enquiry. As per the contention of the petitioner, as reflected from the trend of cross examination put to this witness, it is revealed that he did not admit this fact that before the enquiry officer, he had put his presence on 25.12.2001 and 2.1.2002. Had the enquiry proceedings or copy thereof, produced before this Court, that would have enabled it to find out as to whether on the aforesaid dates i.e. 25.12.2001 & 2.1.2002, the petitioner had appeared before the enquiry officer or not.

14. According to Shri Swaran Kumar (RW-2), the petitioner had failed to appear on 14.1.2002, the date, on which, the witnesses of the respondent management were to be recorded and for this reason, he had been proceeded against exparte. This fact, in the absence of enquiry proceedings, is not proved. Moreover, I would like to observe that in case, the petitioner had been absent on the fixed date i.e. 14.1.2001, it was required of the enquiry officer (RW-2) to have issued him fresh notice so that he (petitioner) could have defended his case. It is further noted that in the statement of Shri Swaran Kumar (RW-2), it has also not come that the petitioner had been made known that he is entitled to avail the services of some defence assistant, in order to defend himself in the enquiry proceedings. In case, such opportunity had been given to the petitioner, he could not have been proceeded against exparte on 14.1.2001 because on that date, if the petitioner had not been present, in fact, his defence assistant could have appeared. This goes to show that the petitioner was not afforded reasonable opportunity to defend himself in the enquiry proceedings. The manner, in which, the enquiry was completed, also goes to show that the principles of natural justice had not been adhered to by the enquiry officer. It is further to be noted that there is no evidence, on record, whatsoever, which could go to show that the enquiry report had been served/supplied to the petitioner accompanied with 2nd show cause notice. It has been held by *Hon'ble Supreme Court in 1994 LAB.1.C 762, Managing Director, ECIL, Hyderabad etc. Vs. B Karunakar etc. that:*

“Delinquent is entitled to copy of enquiry report, irrespective of whether he asks for it or not.”

It has further been held that :

“This report has to be furnished to the employee even if statutory rules are silent or against it.”

15. In the instant case, the enquiry report was required to be supplied to the petitioner alongwith 2nd show cause notice even if, it has been presumed that he had been proceeded against exparte. For want of supply of enquiry report, a material prejudice has been caused to the petitioner. I may further like to point out that the allegations against the petitioner, in the enquiry report, were similar to those, for which he had been tried in a criminal case before SDJM, Nalagarh and that as per copy of judgment Ex. PF, he had been acquitted of the charges alongwith other co-accused. In this way, from the evidence, on record, it has been established by the petitioner that his services have been terminated without holding fair and proper enquiry as per the principle of natural justice. Consequently, his alleged termination w.e.f. 11.9.2001, is held to be illegal and improper. Accordingly, my answer to this issue is in “Yes”.

Issue No. 2.

16. It is to be noted that there is no evidence, whatsoever, on record, brought by the petitioner which could go to show that after his termination/disengagement, he had remained not gainfully employed. For his failure, to bring evidence to this effect, that after having been disengaged from services, he remained not gainfully employed, I am of

the considered view that, he does not deserve to be granted back wages. *It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla* that “full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”.

16. Since, while deciding issue no.1, above, I have already held that the services of the petitioner had been terminated illegally and in an unjustified manner in contravention of the principles of natural justice, he deserves to be reinstated in service with seniority and continuity but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue No. 3

17. In support of this issue, no evidence has been led by the respondent. Moreover, it is not the case of the respondent that the services of the petitioner had been engaged for the specific period and that on the completion of the same, those stood dispensed with. Thus, the respondent fails to prove this issue to which my answer is in “No”.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 11.9.2001. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 10th September, 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla
Camp at Solan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

Ref no. 111 of 2009.
Instituted on 26.12.2009.
Decided on. 15.9.2010.

Harish Kumar S/o Shri Shiv Ram R/o Vilalge Katha, P.O. Baddi, Tehsil, Nalagarh, District Solan, HP.

. .Petitioner.

VS.

The Managing Director, M/s Saini Hair Products Pvt. Ltd, Village Baddi, Tehsil Nalagarh, District Solan, HP.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: None.

For respondent: None.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether the termination of services of Shri Harish Kumar S/o Shri Shiv Ram by the Managing Director, M/s Saini Hair Products Pvt. Ltd, Village Baddi, Tehsil Nalagarh, District Solan, HP w.e.f. 15.5.2008, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief of service benefits, including reinstatement, back wages, seniority and compensation the aggrieved workman is entitled to?”

2. At the very out set, I would like to point out that having been served, the parties failed to put their presence before this Court, on the fixed dates i.e 31.7.2010 and also on 15.9.2010, on which date (15.9.2010), this

Court proceed with to decide the reference, on the basis of material, whatsoever, available on the file. It is highlighted that the services of the petitioner were terminated w.e.f. 15.5.2009 by the respondent (The Managing Director, M/s Saini Hair Products Pvt. Ltd, Village Baddi, Tehsil Nalagarh, District Solan, HP.), without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act). Since, for the failure of the petitioner to put his presence either in person or through his counsel to file statement co claim as well as that there is no evidence, whatsoever, on record, which could go to show that his services had been terminated by the respondent w.e.f. 15.5.2008, in contravention of the provisions of the Act, I have been left with no other alternative but to hold that the petitioner has failed to prove that his services had been terminated in contravention of the provisions of the Act. Accordingly, the reference stands answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 15th September, 2010.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
CAMP AT SOLAN

Ref no. 115 of 2006.
Instituted on.3.8.2006.
Decided on. 10.9.2010.

1. Neter Singh S/o Shri Keshwa Ram R/o Village Mahlog, P.O Malhoti, Tehsil Pachhad, District Sirmour, HP.
 2. Satish Dutt sharma S/o Shri Gita Ram R/o Village Nadar Khozar, P.O Naina Tikkar, Tehsil Pachhad, District Sirmour, HP.
 3. Attar Singh S/o Shri Shardiya Ram R/o Village Khozar, P.O Naina Tikkar, Tehsil Pachhad, District Sirmour, HP.
 4. Puran Chand S/o Shri Sant Ram R/o Village Raja -ka-Thada, P.O Narag, Tehsil Pachhad, District Sirmour, HP.
 5. Joginder Singh S/o Shri Yashwant Singh R/o Village Bagad, P.O Mangarh, Tehsil Pachhad, District Sirmour, HP.
 6. Prem Dutt S/o Shri Tulsi Ram R/o Village Shiwanaghat, P.O Kujji, Tehsil Pachhad, District Sirmour, HP.
 7. Raghuvir Singh S/o Shri Amar Singh R/o VPO Mangarh, Tehsil Pachhad, District Sirmour, HP.
- . .Petitioners.

Vs.

The Divisional Forest Officer, Forest Division Rajgarh, District Sirmour, HP.

. .Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR.
For respondent : Shri Jagdish Kanwar, Ld. Dy. DA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether termination of the services of S/Shri 1. Neter Singh S/o Shri Keshwa Ram 2. Satish Dutt sharma S/o Shri Gita Ram 3. Attar Singh S/o Shri Shardiya Ram 4. Puran Chand S/o Shri Sant Ram 5. Joginder

Singh S/o Shri hwant Singh 6. Prem Dutt S/o Shri Tulsi Ram 7. Raghuvir Singh S/o Shri Amar Singh workmen by the Divisional Forest Officer, Forest Division, Rajgarh, District Sirmour, HP w.e.f. year, 2001 and 31.8.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen are entitled to?"

2. At the very out set, I would like to point out that although the statement of claim has been filed by seven petitioners as named therein but during the proceedings of this case, a statement was made by Shri J.C. Bhardwaj, AR for the petitioners, on 6.5.2010, wherein he had stated that since, the services of petitioners S/Shri Satish Dutt, Attar Singh, Joginder Singh, Puran Dutt and Raghuvir Singh, stand already regularized, the above named petitioners do not press their claim as set out in the statement of claim, filed before this Court and for this reason, the same against said petitioners be treated as fully settled, out of Court.

3. In view of the aforesaid statement of Shri J.C Bhardwaj, AR for the petitioners, the claims of the aforesaid petitioners S/Shri Satish & others stand disposed of as settled out of court.

4. Now, since the claims of petitioners S/Shri Natter Singh (hereinafter referred as petitioner no.1) and Puran Chand (hereinafter referred as petitioner on.4) remain to be decided by this Court, I proceed to narrate the facts pertaining to their respective claims only and the reply which has been filed by the respondent concerning them.

5. It is alleged that petitioner no.1 was employed as worker somewhere during the year, 1993 and his services remained continued with some artificial and fictional breaks till 15.3.2002, when his services were illegally terminated. As far as petitioner no.4 is concerned, he was employed in the year, 1991 and his services were terminated during the year, 1999 and finally on 21.8.2002. They had worked with the respondent department for more than 10 years continuously and also completed 240 days in every calendar year including twelve calendar months preceding their termination. It is further averred that while performing his duties, in forest, petitioner no.4 had sustained injuries and for this reason as per the law laid down by Hon'ble Apex Court, his claim required to be considered as per section 42(t) of EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION ACT, 1995, whereby a person acquiring disability, during service tenure, is entitled to be protected under the aforesaid Act. The disability which has been suffered by petitioner no.4, on account of injuries, having been sustained by him, while performing duties in the forest, is 75%. It is further maintained that many juniors to the petitioners were retained on work while violating the seniority list on the divisional level and for this reason, there has been violation of the provisions of section 25G & H of the Act. During, their service period, the petitioners had not been issued show cause notice or explanation. In this way, their services were illegally terminated/retrrenched against the provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act) and for this reason, they deserve to be reinstated alongwith all the consequential benefits.

6. The claims of the petitioners have been contested and resisted on having raised various preliminary objections including that the forest department is not an industry within the definition of the Act and that the same suffer from delay and laches. On merits, it has been asserted that petitioner no.1 was engaged as daily wage casual labourer on various seasonal plantation work at Narang range on 1.6.1993 and continued to work as such with breaks, on his own, upto 2001 and thereafter, he left the work, on his own, and never returned. His services had not been terminated. Similarly, petitioner no.4, had also been engaged on various seasonal forestry works in Narang range during November, 1991 and while carrying out forestry work, he met with an accident on 26.11.1991 and was got treated at PGI, Chandigarh. He had also been paid compensation amounting to Rs. 93,750/- vide cheque no. 658611 dated 31.3.1995. As per the decision of this Court dated 8.4.1999, he was reengaged on seasonal forestry work on 3.7.1999 and continued as such with voluntarily breaks at his own sweet will, except for the year when he was temporarily disengaged due to paucity of funds and work in Narang range, by issuing him due notice on 16.3.2003. As per the decision of the Hon'ble High Court dated 13.10.1995 in CWP no. 1708 of 1995 titled as Amar Singh Vs. State, he (petitioner no.4) was reengaged on the availability of work and funds, seniority wise, vide letter no. 7138 dated 4.1.2003 w.e.f. 10.1.2003. This temporary disengagement from work due to paucity of funds and work cannot be construed as illegal termination. It is further averred that the petitioners had not approached the authority regarding their temporary disengagement, personally or in writing. Other allegations denied.

7. By filing rejoinder, the petitioners no.1 & 4 have reaffirmed their own allegations by denying those of the respondent.

8. Pleadings of the parties gave rise to the following issues which were struck on 7.9.2007.

1. Whether the services of the petitioners were terminated illegally by the respondent during 2001 and 31.8.2002 without complying with the provisions of Industrial disputes Act, 1947? If so, its effect? . . .OPP.

2. If issue no.1 is proved in affirmative, to what relief, the petitioners are entitled to? . . .OPP.

3. Whether the present reference is not maintainable in the present form? . .OPR.
4. Relief.
9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.
10. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Accordingly Yes.
Issue no.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioners no. 1 & 4 and against the respondent, per operative part of award.

Reasons for findings

Issue No.1

11. It has been specifically alleged by the petitioner no.1 that somewhere during the year 1993, he had been employed as worker and that his services remained continued with some artificial and fictional breaks till 15.3.2002, when his services were illegally terminated without notice in contravention of the provisions of the Act. It has further been asserted that he had completed 240 days in every calendar year including twelve calendar months preceding his termination.

12. While appearing in the witness box as PW-1, petitioner no.1 has supported all the material particulars, as stated in the petition, on oath, including that when his services were terminated, he was neither served with any notice nor paid compensation. He further stated that junior persons namely Nand Ram, Joginder Singh, Rattan Dutt, Prem Dutt etc. are still working and that they are being regularized. In the cross examination, he denied of not having completed 240 days in any calendar year and that mandays chart Ex. RA is correct. He further denied of having left the job, on his own, in the year, 2001.

13. Although, the petitioner no.1 has alleged that he had completed 240 days in each calendar year, including twelve calendar months, preceding his alleged termination, but in support of such allegation, he has not filed any document. Besides, when regard is given to his statement (PW-1) it is further revealed that he has not stated to have completed 240 days in any calendar year including twelve calendar months preceding his termination. The respondent has brought, on record, mandays chart of petitioner no.1, which is Ex. RA. The perusal of this document goes to show that petitioner no.1 had worked for 41 days in 1993, 102 ½ in 1994, 110 in 1995, 181 in 1996, 16 in 1997, Nil in 1998, 224 in 1999, 175 in 2000 and 30 days in 2001. I may mention that although the petitioner no.1 (PW-1) has stated that this mandays chart Ex. RA to be incorrect but he has not filed any such document which could go to show that this mandays chart is not in accordance with the record maintained by the department. In the absence of such proof, it has to be held that mandays chart Ex. RA is correct, as per the record, maintained by the respondent department. It is further to be noted that although, in the petition, it has been alleged that petitioner no.1 was disengaged on 15.3.2002 but before this Court, this fact has not been supported by PW-1 (petitioner no.1). Moreover, in the face of Ex. RA, the contention of the petitioner that his services had been disengaged on 15.3.2002 also becomes false because from this document, it is quite apparent that he had worked only upto the year, 2001. It is true that the defence version is to this effect that the petitioner had abandoned the job and this version has duly been supported by Shri Vipin Chandernal (RW-1) by stating that the petitioner no.1, on his own, had left the job during the year, 2001 but still I am of the view that from the statement of RW-1, it is not proved that any notice had been issued to petitioner no.1, in order to resume his job, in case, he had actually abandoned the same. It has been held by our own Hon'ble High Court in *latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another*. that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

14. Since, the petitioner could not prove that his services were terminated on 15.2.2002, as has been alleged, from the mandays chart, Ex. RA and also from the reference which has been made to this Court, it is abundantly clear that he had remained in job till the year, 2001, in which, he had worked for 30 days. As, from the documentary as well as oral evidence, the petitioner no.1 has failed to prove that before his alleged termination, he had completed 240 days in the twelve calendar months, his termination cannot be said to be illegal and improper for want of the compliance of section 25F of the Act. In case, he had proved, on record, that preceding his termination, he had

completed 240 days, the respondent was required to comply with the requirements of section 25F by issuing a notice and paying retrenchment compensation to petitioner no.1.

15. Another ground which has been taken by petitioner no.1, in order to assail his alleged termination to be illegal and improper is that his juniors have been retained in service and for this reason, there has been contravention of section 25G & H of the Act. Before this Court, he (PW-1) has named his such juniors to be S/Shri Nand Ram, Joginder singh, Rattan Dutt, Prem Dutt etc., who are still working with the respondent and further that their services are being regularized. In the cross examination of Shri Vipin Chanderpall (RW-1), it has come that petitioner no.1 was engaged on 1.6.1993 whereas Nand Ram, Joginder singh, Rattan Dutt, Prem Dutt, were engaged on 21.12.1994 and that they are still continuing. He further admitted this fact that junior workers have also been employed on the same terms and conditions and that S/Shri Nand Ram, Joginder singh, Rattan Dutt, Prem Dutt have already been regularized. From the admission made by Shri Vipin Chanderpall (RW-1) that S/ Shri Nand Ram, Joginder singh, Rattan Dutt, Prem Dutt who are junior to petitioner no.1 are still continuing in service, I have no hesitation in holding that there is breach of section 25G & H of the Act. It has been held by our own Hon'ble High Court in case titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

16. The contention of the petitioner no.4 is to this effect that, initially, he had been engaged in the year, 1991 and that in the year, 1999 his services were terminated. Thereafter, on 31.8.2003, his services stood terminated finally. It has also been alleged that while performing duties, in the forest, he had sustained injuries and that on account of such injuries, he suffered disability to the extent of 75%. In the reply, the respondent has made it clear that petitioner no.4 had sustained injuries on 26.11.1991 while carrying out fencing work in the forest and that he was got treated at PGI Chandigarh besides having been paid compensation amounting to Rs. 93,750/- vide cheque no. 658611 dated 31.3.1995 and that as per the directions of this Court, he was reengaged on 3.7.1999.

17. Undoubtedly, as per the contention of petitioner no.4, his services had been finally terminated on 31.8.2002 but when regard is given to his statement, as PW-2, it is revealed that his services were reengaged in the month of July, 1999 by awarding seniority but without back wages and that since then he has been working. Shri Vipin Chanderpall (RW-1) while supporting the defence version, on all material particulars, has also stated that on 3.7.1999, petitioner no.4, had been reengaged as per the order of Labour Court dated 8.4.1999 and he has been continuing till date.

18. Ex. RD, is the mandays chart of petitioner no.4 which goes to show that he had worked for 181 days in 1999, 290 in 2000, 342 in 2001, 203 in 2002, 178 in 2003, 99 in 2004, 272 in 2005 and 89 in 2006 (upto 31.3.2006). Petitioner no.4 has also brought, on record, mark P, which further goes to show that in the year, 2006, he had worked for 335 days and for 293 days in the year, 2007 (till 31.10.2007). From the documentary as well as oral evidence, as has been referred to above, it is abundantly clear that since, 1999, petitioner no.4 has been working regularly. On the face of such evidence, the contention of the petitioner no.4 that on 31.8.2002, his services were terminated, is not proved.

19. In the statement of petitioner no.4 (PW-2), it has further come that during the years, 2002, 2003 and 2004, the service of the workers, who had also been issued notices, were regularized and that they too had worked for lesser than 240 days in calendar years. Services of S/Shri Chamel Singh, Prem Dutt and Dalip Kumar, who are the workmen in the same division were regularized, a year back. Since, he has also completed more than ten years and in each year, he worked for 240 days, his services also require to be regularized with retrospective effect, from the year when the aforesaid were regularized.

20. Undoubtedly, Ld. AR for the petitioner no.4 has submitted that since, he (petitioner no.4) had suffered injuries while doing forestry work and that on account of the same, he become disabled, he is entitled to be protected under section 42(t) of EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION ACT, 1995 but when regard is given to the reference which has been made to this Court by the appropriate government, the contention of Ld. AR does not hold good because the reference which has been made to this Court is not in the regard. As per the reference, this Court has to ascertain as to whether the services of petitioner no.4 had been terminated illegally and in an unjustified manner w.e.f. 31.8.2002 for being in violation of the provisions of the Act. As already observed, the petitioner has failed to prove this fact. However, I am of the view that keeping into consideration this fact that petitioner no.4 had suffered injuries, while working in the forest, for the respondent, for which he had also been got treated at PGI Chandigarh besides having been paid compensation in the amount, aforesaid, his case can also be considered sympathetically by the authorities concerned for his regularization, since, persons juniors to him have been regularized. Consequently, my answer to this issue is in “Yes” accordingly.

Issue No.2

21. When regard is given to the allegations made in the petition, it is highlighted that the petitioners (petitioners no.1 & 4) are unemployed. In the statement of petitioner no.1 (PW-1) it has come that he is unemployed. In his cross examination, it has come that he has been doing agricultural work since, 2001 till date. For the failure of

petitioner no.1 to have alleged and proved that since his alleged termination, he has not been gainfully employed and further that in his statement (PW-1) it has come that since, 2001, he has been doing agricultural work, I am of the view that he does not deserve to be granted back wages. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that "full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry".***

Consequently, in view of the law laid down by the Hon'ble Apex Court, the petitioner no.1 is held not to be entitled for back wages. However, since his services had been terminated, in contravention of the provisions of the Act, I hold that he is entitled to reinstatement in service with seniority and continuity but without back wages. As far as petitioner no.4 is concerned, it stands proved, on record, that he has been in service till date and that he could not prove that his services were terminated on 31.8.2002. As already observed while deciding issue no.1 above, the authorities concerned can consider his claim sympathetically for regularization on the same analogy as per which, his juniors were regularized. Thus, my answer to this issue is in "Yes" accordingly.

Issue No. 3.

22. It is not understandable as to why the present reference is not maintainable. Apart from it, the learned Dy. DA for the respondent could not explain as to why this reference is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of petitioner no.1 (Natter Singh) is allowed and it is ordered that he (petitioner no.1) be reinstated in service, with seniority and continuity but without back wages, from the year, 2001. As far as the petitioner no.4 (Puran Chand), is concerned, his claim stands disposed of with the observation that the authorities concerned can consider his claim sympathetically for regularization, on the same analogy as per which, his juniors were regularized. As far as the other petitioners S/Shri Satish Dutt Sharma (petitioner no.2), Attar Singh (petitioner no.3), Joginder Singh (petitioner no.5), Prem Dutt (petitioner no.6) and Raghuvir Singh (petitioner no.7), are concerned their claims stand already settled in view of the statement of Shri J.C Bhardwaj, Ld. AR for the petitioners, dated 6.5.2010. Consequently, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records. Announced in the open court today this day of 10th September, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.
Camp at Solan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 124 of 2006
Instituted on 16.10.2006.
Decided on. 6.9.2010.

Naresh Sharma S/o Shri Vidya Parkash R/o Village Kalu Jhanda, P.O Mandhala, Tehsil Kasauli, District Solan, HP. . .Petitioner.

VS.

The Factory Manager, M/s Sinar Bulbs & Tubes Pvt., Ltd., and Reeze International Barotiwala, P.O Barotiwala, District Solan, HP. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: None.
For respondent: None.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Shri Naresh Sharma S/o Shri Vidya Parkash workman by the Manager, M/s Sinar Bulbs & Tubes Pvt., Ltd., and Reeze International Barotiwala, P.O Barotiwala, District Solan, HP w.e.f. 18.9.2004 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. At the very outset I would like to point out that although the reference was received in the month of October, 2006 and that it was registered on 16.10.2006 and that the petitioner through counsel put his presence on 1.12.2006 but till date, neither the statement of claim was filed, nor the respondent could be got served. It is further to be noted that on the fixed date i.e 6.9.2010, when neither the petitioner was present nor his counsel, this Court was left with no other alternative then to proceed with to decide the reference on the basis of the material, whatsoever, available on the record particularly having regard to this legal proposition that a reference cannot be dismissed in default. It is highlighted that the services of the petitioner were terminated by the respondent w.e.f. 18.9.2004 without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act) in an illegal and improper manner. Since, his services were terminated against the provisions of the Act, he deserves to be reinstated with all the consequential service benefits.

For the failure of the petitioner to have filed statement of claim and further lead evidence in support of the allegations as made in the reference, there is no material, whatsoever, before this Court to hold that his services were terminated in contravention of the provisions of the Act and that he deserves to be granted service benefits. Accordingly, this reference is answered against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 6th September, 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 124 of 2007.
Instituted on 8.10.2007.
Decided on. 8.9.2010.

Nirmal Singh S/o Shri Sukar Ram R/o Village Khoronwala. P.O Gorkhuwala, Tehsil Paonta Sahib, District Sirmour, HP. .Petitioner.

VS.

The Collector of Forest Settlement Solan & Sirmour at Nahan, District Sirmour, HP . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether the termination of services of Shri Nirmal Singh S/o Shri Sukar Ram workman by the Collector, Forest Settlement Sonan & Sirmour at Nahan District Sirmour, HP without serving him any notice is proper and justified? If not, what back wages, seniority and service benefits and relief, the above aggrieved workmen are entitled to?”

2. In nutshell, the case of the petitioner is that in the month of Jan., 1998, he had been engaged as chainman by the respondent in Bhangani forest range and continued to remain as such till the year, 2002. The petitioner had also worked under Mazara forest range till the year, 2004 and thereafter under Girinagar forest range till 30.6.2006. It is further averred that the petitioner had been reengaged w.e.f November, 2006 and worked as such till 31.6.2007. W.e.f 1.7.2007, the services of the petitioner, had again been terminated. He (petitioner) had been again reinstated on 1.12.2007 and is working continuously with the respondent. The services of the petitioner firstly w.e.f. 1.7.2006 and thereafter w.e.f 1.7.2007, had been orally terminated without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act) as neither any notice nor compensation had been paid to him (petitioner). He had completed 240 days in a calendar year and that the services of other workers, engaged by the department, before him, have been regularized. It is further asserted that while terminating his services, the respondent had violated the provisions of section 25F/N, 25G & H of the Act. Since, his services, firstly w.e.f. 1.7.2006 and thereafter w.e.f. 1.7.2007, had been disengaged in violation of the provisions of the Act, he deserves to be granted all the service benefits including back wages.

3. The claim of the petitioner has been contested, on having raised various preliminary objections, including that the forestry works are generally seasonal in nature and that the daily wage mazdoors are engaged for field operation works, which are available for maximum of 200 days, in a calendar year. On merits, it has been asserted that the petitioner had been initially engaged during March, 1998. The mazdoors are engaged with the revenue field staff, for survey and demarcation. During rainy season, their services are disengaged. It has been denied that the petitioner had worked continuously upto June, 2006. In fact, he had been absenting himself from the work and for this reason, as and when, he used to report for work, during the working season, he had been reengaged. Since, the field operations are closed during rainy season, no mazdoor can be engaged. It is further maintained that the disengagement and engagement of daily wage mazdoors, including the petitioner, are being done on the principles of first come last go and vise-versa. Thus, there has been no violation of the provisions of the Act.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 29.5.2009.

1. Whether the termination of services of Nirmal Singh petitioner by the Collector Forest Settlement, Solan and Sirmour at Nahan District Sirmour HP without serving any notice is illegal and unjustified as alleged? . . .OPP.
2. If issue no.1 is proved, to what back wages, seniority, service benefits and relief, the petitioner is entitled to? . . .OPP.
3. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

Reasons for findings

Issue No. 1

8. It is true that as per the defence version, the services of the petitioner were being engaged in order to do seasonal work, but, on the record, no such document has been produced which could go to prove that the petitioner had been made known that his services were only for temporary/casual work and that the same were required to be disengaged after the completion of the work. The petitioner (PW-1), in his affidavit, Ex. PA, has supported all the material particulars, as narrated in the petition. In the cross examination, he denied of having abandoned the job and that he had not completed 240 days.

9. According to Shri Kamal Kishore (RW-1), the petitioner had been engaged as daily wage mazdoor, for field work, to be carried out during the forest settlement, which is seasonal in nature and that the

engagement/disengagement of such labourer is a regular and normal phenomena. A mazdoor cannot be engaged without the availability of work. For this reason, the disengagement on the ceasing of the work, cannot be construed as retrenchment. The petitioner had never worked continuously upto June, 2006, but used to absent, on his own. During, 1998, he had worked only for 75 days and then for 154, 155, 175, 197, 183, 103, 207 and 196, since, 1999 to 2006. The petitioner is still working as daily wage mazdoor with the department, who had worked for 196 days in the year, 2006, 154 days, 2007 and 78 days upto March, 2008. Ex. RA, is the proposed organized structure (objected to). In the cross examination, he admitted that as per Ex. PC, the mazdoors, engaged in the field, have completed more than 250 days. He further admitted that new mazdoors/chainman have been engaged after the disengagement of the petitioner.

10. From the seniority list, Ex. PC, it is abundantly clear that the petitioner had, initially, been engaged by the respondent department on 2.1.1998 and worked as such till the year, 2006. On the face of the documentary evidence, as referred to above, it is clear that the services of the petitioner had been engaged by the department in the month of Jan., 1998 and not w.e.f. march, 1998 as is the stand of respondent. Further, when regard is given to the statement of the petitioner (PW-1), it is abundantly clear that he has stated of having completed 240 days in every calendar year including twelve calendar months preceding his termination. The evidence, which has been led by the respondent, clearly goes to show that he (petitioner) had not completed 240 days in twelve calendar months preceding his termination. As the petitioner has failed to prove that in the twelve calendar months, preceding his alleged disengagement, he had worked for 240 days, I have no hesitation in holding that the respondent was not required to comply with the requirements of section 25F of the Act as per which, a notice was to be issued to the petitioner besides paying retrenchment compensation. Thus, there is no violation of the provisions of section 25F of the Act.

11. Another ground on which, the petitioner has challenged his termination is that juniors to him have been retained/engaged by the respondent after his termination. It has been admitted by Shri Kamal Kishore (RW-1) that some new mazdoors/chainmen have been engaged after the petitioner's disengagement.

12. The seniority list, Ex. PC coupled with the statement of Shri Kamal Kishore (RW-1), go to show that S/Shri Gain Chand, Sukhvir Singh etc. are juniors to the petitioner and that they are still working with the respondent department. In these circumstances, the petitioner has succeeded in discharging the onus, which was upon him, to prove that the persons, juniors to him, have either been engaged or retained by the respondent. When, he (petitioner) succeeds in discharging this onus, it was upon the respondent to have led evidence to the contrary either oral or documentary. Since, the respondent has failed to lead such evidence to disprove the version of the petitioner that his juniors have been retained by the respondent, I am of the firm view that there has been non compliance of the provisions of sections 25G & H of the Act, as per which, the services of the juniors were required to be disengaged than that of petitioner or in case some new persons were to be engaged, the petitioner was required to be given preference. It has been held by our own Hon'ble High Court in case titled as *State of HP & Others Vs Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

13. For my above discussion and the law laid down by our own High Court (supra), I have no hesitation in holding that the services of the petitioner had been terminated/disengaged, illegally and in an unjustified manner without complying with the provisions of the Act i.e section 25G & H. Accordingly, my answer to this issue is in “Yes”.

Issue No. 2.

14. When regard is given to the statement of the petitioner, when he appeared in the witness box as PW-1, it is quite clear that after having been disengaged, from service, his services had been again reinstated w.e.f. 1.12.2007 and that he is still working with the respondent. Moreover, ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that ***“full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”***. In view of the law laid down by the Hon'ble Apex Court, I am of the view that the petitioner is not entitled to back wages. Since, the services of the petitioner had been terminated in contravention of the provisions of the Act, I am of the view that he requires to be granted seniority, for the periods, when he remained disengaged from service. Thus, my answer to this issue is in “Yes” accordingly.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be granted seniority when he remained disengaged from service but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 8.9.2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 126 of 2007.
Instituted on 8.10.2007.
Decided on. 8.9.2010.

Shyam Singh S/o Shri Ramiya Ram R/o Village Kafflah, P.O Kulage, Tehsil Chopal, District Shimla, HP.

. Petitioner.

VS.

The Collector of Forest Settlement Solan & Sirmour at Nahan, District Sirmour, HP.

. Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether the termination of services of Shri Shyam Singh S/o Shri Ramiya Ram workman by the Collector, Forest Settlement Sonan & Sirmour at Nahan District Sirmour, HP without serving him any notice is proper and justified? If not, what back wages, seniority and service benefits and relief, the above aggrieved workmen are entitled to?”

2. In nutshell, the case of the petitioner is that in the month of December, 1998, he had been engaged as chainman by the respondent in Bhangani forest range under Paonta Division and continued to remain as such till Jan., 2003. Thereafter, he worked in the office of Collector Forest Settlement Nahan w.e.f. Jan., 2003 to November, 2003, when his services were orally terminated w.e.f. December, 2003. It is further averred that he had filed an OA no. 1049 of 2004, against his illegal termination, before Administrative Tribunal and during the pendency of aforesaid OA, he had been reengaged w.e.f. May, 2004, and worked as such till April, 2005., on which date his services were again terminated. Then he had raised an industrial dispute and during the pendency of conciliation proceedings, his services were reengaged w.e.f. 10.10.2005 and he worked till 30.6.2006, under Girinagar Forest Range. W.e.f. 1.7.2006, his services were again terminated without following the mandatory provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act). He (petitioner) was again reinstated in November, 2006 but no back wages and seniority had been given to him. W.e.f. December, 2007, he had been reengaged and is still working with the respondent. The services of the petitioner, had been orally terminated without complying with the provisions of the Act as neither any notice nor compensation had been paid to him (petitioner). He had completed 240 days in a calendar year and that the services of other workers, engaged by the department, before him, have been regularized. It is further asserted that while terminating his services, the respondent had violated the provisions of section 25F/N, 25G & H of the Act. Since, his services, firstly w.e.f. 1.7.2006 and thereafter w.e.f. 1.7.2007, had been disengaged in violation of the provisions of the Act, he deserves to be granted all the service benefits including back wages.

3. The claim of the petitioner has been contested, on having raised various preliminary objections, including that the forestry works are generally seasonal in nature and that the daily wage mazdoors are engaged for field operation works, which are available for maximum of 200 days, in a calendar year. On merits, it has been asserted that the petitioner had been initially engaged during Jan., 1999. The mazdoors are engaged with the revenue field staff, for survey and demarcation. During rainy season, their services are disengaged. It has been denied that the petitioner had worked continuously upto Jan. 2003. In fact, he had been absenting himself from the work and for this reason, as and when, he used to report for work, during the working season, he was being reengaged. Since, the field operations are closed during rainy season, no mazdoor can be engaged. It is further maintained that the disengagement and engagement of daily wage mazdoors, including the petitioner, are being done on the principles of first come last go and vise-versa. Thus, there has been no violation of the provisions of the Act.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.
5. Pleadings of the parties gave rise to the following issues which were struck on 29.5.2009.
 1. Whether the termination of services of Nirmal Singh petitioner by the Collector Forest Settlement, Solan and Sirmour at Nahan District Sirmour HP without serving any notice is illegal and unjustified as alleged? . .OPP.
 2. If issue no.1 is proved, to what back wages, seniority, service benefits and relief, the petitioner is entitled to? . .OPP.
 3. Relief.
6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.
7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

Reasons for findings

Issue No.1

8. It is true that as per the defence version, the services of the petitioner were being engaged in order to do seasonal work, but, on the record, no such document has been produced which could go to prove that the petitioner had been made known that his services were only for temporary/casual work and that the same were required to be disengaged after the completion of the work. The petitioner (PW-1), in his affidavit, Ex. PA, has supported all the material particulars, as narrated in the petition. In the cross examination, he denied of having abandoned the job and that he had not completed 240 days.

9. According to Shri Kamal Kishore (RW-1), the petitioner had been engaged as daily wage mazdoor, for field work, to be carried out during the forest settlement, which is seasonal in nature and that the engagement/disengagement of such labourer is a regular and normal phenomena. A mazdoor cannot be engaged without the availability of work. For this reason, the disengagement on the ceasing of the work, cannot be construed as retrenchment. The petitioner had never worked continuously upto Jan. 2003. During, 1999, he had worked only for 254 days then for 155, 184, 182, 273 days upto 2003. The petitioner had been reengaged w.e.f. October, 2003 to June, 2004. He used to be reengaged, on work, as and when he reported for the work, during the working season. The petitioner had worked for 230 days in the year 2004, 117, 192, 315 and 90 upto March, 2008. From 2004, he has been still working with the respondent. Ex. RA, is the proposed organized structure (objected to). In the cross examination, he admitted that as per Ex. PC, the mazdoors, engaged in the field, have completed more than 250 days. He further admitted that new mazdoors/chainman have been engaged after the disengagement of the petitioner.

10. From the seniority list, Ex. PC, it is abundantly clear that the petitioner had, initially, been engaged by the respondent department on 2.1.1999 and worked as such till the year, 2005. On the face of the documentary evidence, as referred to above, it is clear that the services of the petitioner had been engaged by the department in the month of Jan. 1999. Further, when regard is given to the statement of the petitioner (PW-1), it is abundantly clear that he has stated of having completed 240 days in every calendar year including twelve calendar months preceding his termination. The evidence, which has been led by the respondent, clearly goes to show that he (petitioner) had not completed 240 days in twelve calendar months preceding his termination. As the petitioner has failed to prove that in the twelve calendar months, preceding his alleged disengagement, he had worked for 240 days, I have no hesitation in holding that the respondent was not required to comply with the requirements of section 25F of the Act as per which, a notice was to be issued to the petitioner besides paying retrenchment compensation. Thus, there is no violation of the provisions of section 25F of the Act.

11. Another ground on which, the petitioner has challenged his termination is that juniors to him have been retained/engaged by the respondent after his termination. It has been admitted by Shri Kamal Kishore (RW-1) that some new mazdoors/chainmen have been engaged after the petitioner's disengagement.

12. The seniority list, Ex. PC coupled with the statement of Shri Kamal Kishore (RW-1), go to show that S/Shri Gain Chand, Sukhvir Singh etc. are juniors to the petitioner and that they are still working with the respondent department. In these circumstances, the petitioner has succeeded in discharging the onus, which was upon him, to prove that the persons, juniors to him, have either been engaged or retained by the respondent. When, he (petitioner) succeeds in discharging this onus, it was upon the respondent to have led evidence to the contrary either oral or documentary. Since, the respondent has failed to lead such evidence to disprove the version of the petitioner that his juniors have been retained by the respondent, I am of the firm view that there has been non compliance of the provisions of sections 25G & H of the Act, as per which, the services of the juniors were required to be disengaged than that of petitioner or in case some new persons were to be engaged, the petitioner was required to be given preference. It has been held by our own Hon'ble High Court incase titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

13. For my above discussion and the law laid down by our own High Court (supra), I have no hesitation in holding that the services of the petitioner had been terminated/disengaged, illegally and in an unjustified manner without complying with the provisions of the Act i.e section 25G & H. Accordingly, my answer to this issue is in “Yes”.

Issue No. 2.

14. When regard is given to the affidavit Ex. PA, of the petitioner, which he tendered in the witness box, as PW-1, it is quite clear that after having been disengaged, from service, his services had been again reinstated w.e.f. December, 2007 and that he is still working with the respondent. Moreover, ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that ***“full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”***. In view of the law laid down by the Hon'ble Apex Court, I am of the view that the petitioner is not entitled to back wages. Since, the services of the petitioner had been terminated in contravention of the provisions of the Act, I am of the view that he requires to be granted seniority, for the periods, when he remained disengaged from service. Thus, my answer to this issue is in “Yes” accordingly.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be granted seniority when he remained disengaged from service but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 8.9.2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 145 of 2007
Instituted on 16.11.2007.
Decided on. 14.9.2010.

Tikhu Ram S/o Shri Khayali Ram R/o Village Kiaru, P.O Diggall, Tehsil Nalagarh, District Solan, HP.

. .Petitioner.

VS.

2. The Assistant Executive Engineer, Electrical Sub Division, HPSEB, Ram Shehar, District Solan, HP.

3. The Superintending Engineer, Operation Circle, HPSEB, Solan, District Solan, HP.

. Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Subhash Sharma, Advocate.

For respondent: Ms. Sharmila Patial, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Tikhu Ram S/o Shri Khayali Ram workman by the (1) Assistant Executive Engineer, Electrical Sub Division, HPSEB, Ram Shehar, District Solan, HP (2) Superintending Engineer, Operation Circle, HPSEB, Solan, District Solan w.e.f. 30.4.1998 without complying with the provisions of the Industrial Disputes Act, 1947 is legally, justified and maintainable? If not, what seniority, back wages, service benefits and relief the concerned workman entitled to”?

2. Briefly, the case of the petitioner is that he had been engaged, in May, 1986, as daily wage beldar, in section Diggall of the respondent Division and continued to work as such till April, 1998, when his services were illegally terminated. He never remained absent from work except for the period when he was asked by the respondent not to come to the work place as there was no work available. Against his illegal termination, he had filed OA no. 2757/1999, which had to be withdrawn for want of jurisdiction with liberty to pursue his remedy before competent forum. Thereafter, he raised an Industrial Dispute which resulted in the making reference of to this Court. A prayer has been made for his reinstatement alongwith all the consequential benefits including back wages. Although, in the petition it has not been asserted by the petitioner that his services had been terminated in contravention of the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act) but when regard is given to the reference which has been made to this Court, it appears that he assails his termination w.e.f. 30.4.1998, on the ground that the same has been in contravention of the provisions of the Act.

3. The petition has been contested on having raised preliminary objections including maintainability. On merits, it has been asserted that the petitioner had joined the services of the Board w.e.f. 29.5.1986 but he had been in the habit of remaining absent from duties without any sanctioned leave. For this reason, he could not complete 240 days in any calendar year except 1987 and 1988. It has been specifically denied that his services were terminated by the respondent w.e.f. 30.4.1998. In fact, he had abandoned the job. Other allegations either admitted or denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 12.8.2009.

1. Whether the termination of services of Shri Tikhu Ram petitioner by the respondents w.e.f. 30.4.1998 without complying the provisions of the Industrial Disputes Act, 1947 is illegal, unjustified and not maintainable as alleged? . . .OPP.

2. If issue no.1 is proved, to what seniority, back wages, service benefits and relief, the petitioner is entitled to? . . .OPP.

3. Whether the claim is not maintainable in the present form? . . .OPR.

4. Whether the petitioner has lost his lien over the job as alleged? . . .OPR.

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1	No.
Issue No.2	Becomes redundant.
Issue No.3	No.
Issue No.4.	No.

Relief.

Reference answered against the petitioner, per operative part of award.

Reasons for findings***Issue No. 1.***

8. While appearing in the witness box as PW-1, the petitioner has supported all the material particulars including that his services had been engaged as daily wage beldar in the month of May, 1986, and that he continued, as such, till April, 1998 when his services were terminated without issuing any written order. He had completed 240 days in every calendar year preceding his termination. In the cross examination, he denied of not having completed 240 days in twelve calendar months preceding his termination.

9. According to Shri Prem Dass (RW-1), the petitioner had only completed 240 days in the years, 1987 & 1988 and that on 21.4.1998, he had abandoned the job and did not turn up. In the cross examination, he has stated that no notice had been issued to the petitioner to resume his job/duties. He further admitted that the petitioner had not been issued notice or paid compensation. Further explained that he had left the job, on his own.

10. On the record, the respondent has also filed copy of mandays chart which is Ex. R-1. It shows that the petitioner had been engaged on 26.5.1986 and worked till 30.4.1998. Its perusal further goes to show that the petitioner had completed more than 240 days only in the years 1987 and 1989. At this stage, I would like to point out that initial onus was upon the petitioner to have proved that he had completed 240 days in the twelve calendar months preceding his termination but in support of his such plea, he has not filed any document. Undoubtedly, in his statement (PW-1), it has come that he has completed 240 days in every calendar year preceding his termination but his such version becomes false in view of the mandays chart/service particulars, Ex. R-1. On the record, documents Ex. A-1, English translation of which is Ex. A-1/T and Ex. A-2, the English translation of which is Ex. A-2/T have come which go to show that notices had been issued to the petitioner to resume his duties. In the statement of Shri Prem Dass (RW-1), it has come that except the years 1987 & 1988, the petitioner had not completed 240 days and his such version gets corroboration from Ex. R-1 (service particulars of the petitioner).

11. Undoubtedly, it has been stated by the petitioner (PW-1) that, he had completed 240 days in every calendar year preceding his termination but in support of his such version, he has not brought any documentary proof/evidence. It has been held in **2009 (120) FLR 1007 an Civil Appeal no. 4468 of 2005 of Hon'ble Supreme Court incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others** that:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

12. Similarly, it has been held by the Hon'ble Apex Court in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh** that:-

“Incuse workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

13. In order to take the benefit of section 25F of the Act, it was incumbent upon the petitioner to have proved with convincing, oral and documentary evidence, that in the twelve calendar months preceding his alleged termination, he had completed 240 days. It is abundantly clear from Ex. R-1 that in the year, 1998, the petitioner had worked for 9 days and in the year, 1997, for only 10 days. On the face of this document, his contention to have completed 240 days in the year preceding his termination does not hold good. In these circumstances, there was no need for the respondent to have complied with the provisions of section 25F of the Act. Consequently, for my above discussion, I hold that the petitioner has failed to prove this issue, to which my answer is in “No”.

Issue No. 2.

14. In view of my findings on issue no.1 above, this issue becomes redundant.

Issue No. 3.

15. It is not understandable as to why the claim, in the present forum, is not maintainable, particularly, when it has been filed in pursuance to the reference, made to this Court, by the Labour Commissioner. Apart from it, the learned counsel for the respondents could not explain as to why this claim/petition, in the present form, is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in “No”.

Issue No. 4.

16. In support of this issue, the respondents have led no evidence. Moreover, at the time of arguments, it could not be explained as to how and in which manner, the petitioner has lost his lien over the job. Thus, for want of evidence, this issue is not proved to which my answer is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 14th September, 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cumLabour
Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 8 of 2010.
Instituted on 12.4.2010.
Decided on 3.9.2010.

Mehar Chand S/o Shri Dalip Kumar, VPO Taksal, Tehsil Kasauli, District Solan, HP. . .Petitioner.

VS.

Pawan Kumar, Contractor, Becon Business service Pvt. Ltd of M/s Ind. Spinics Ltd. Sector-5, Parwanoo, District Solan, HP. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: None.
For respondent: Shri Rahul Mahajan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Mehar Chand S/o Shri Dalip Kumar by Shri Pawan Kumar, Contractor, Becon Business service Pvt. Ltd of M/s Ind. Spinics Ltd. Sector-5, Parwanoo, District Solan, HP w.e.f. 5.1.2009, without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to?"

2. Before, I proceed further, I may mention that repeated efforts were made for getting effected service on the petitioner through registered post with AD as well as ordinary process. Since, he could not be served through registered post/AD, it was ordered that the service, on the petitioner, be effected through affixation. On 3.9.2010, the service on the petitioner was effected through affixation but he failed to appear before this Court, thus, this court proceeded with to decide the reference on the basis of material, whatsoever, available on the file.

It is highlighted that the services of the petitioner were terminated by Shri Pawan Kumar, Contractor, Becon Business service Pvt. Ltd of M/s Ind. Spinics Ltd. Sector-5, Parwanoo, District Solan, HP (hereinafter referred as respondent) w.e.f. 5.1.2009 without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act). Since, as per the petitioner, his services had been terminated in contravention of the provisions of the Act, a prayer has been made for his reinstatement alongwith all the consequential benefits.

For the failure of the petitioner to have put his presence before this Court on having been served as per the provisions of law and also the statement of claim, there is no material, whatsoever, on record, which could go to

substantiate his such allegation that w.e.f. 5.1.2009, his services had been terminated in contravention of the provisions of the Act. In these circumstances, when nothing has been brought, on record, by the petitioner in support of his alleged claim, I have been left with no alternative but to answer this reference in negative. Accordingly, the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today this day of 3rd September, 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 10 of 2009
Instituted on 2.3.2009.
Decided on. 1.9.2010.

Naratu Ram S/o Shri Khayalu Ram R/o Village & P.O. Kandhar, Tehsil Arki, District Solan, HP.

. .Petitioner.

VS.

The Divisional Forest Officer, Forest Division, Shimla, District Shimla, HP.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Sanjeev Sharma, Advocate.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of service of Shri Naratu Ram S/o Shri Khayalu Ram by the Divisional Forest Officer, Forest Division, Shimla, District Shimla, HP w.e.f. 1.6.2007 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. In nutshell the case of the petitioner is that he was initially appointed as chowkidar on daily wage basis w.e.f. June, 2003, in the construction unit Khalini of Forest Division Shimla by the then Range Officer of the said construction unit and remained as such till 31.5.2007, when his services were verbally terminated. Before his termination, he had completed 240 days in each calendar year. Although, he had made several requests for his reemployment/reengagement, but of no avail. After his retrenchment, the DFO has engaged the service of another person in his place. Since, his services were terminated in contravention of the provisions of section 25F, G & H of the Industrial Disputes Act, 1947 (hereinafter referred as Act), he deserves to be reinstated with all the consequential benefits including back wages.

3. The petition has been contested by admitting that the petitioner was engaged as daily paid chowkidar but it has been denied that he was posted in the office of Range Officer construction unit Khalini. In fact, he had worked under the supervision of work Incharge/forest guard Mist Chamber, Forest Colony, Khalini, as daily paid chowkidar which construction unit was responsible for repair and maintenance of said forest colony. It has been specifically denied that his services were terminated by DFO Shimla, on 31.5.2007, as alleged. It is further asserted that the petitioner, on his own, abandoned the job without assigning any reason or giving intimation to the department. In these circumstances, there was no violation of the aforesaid provisions of section 25F, G & H of the Act. It has been denied that the petitioner had completed 240 days in all the calendar years. Further, an application, for his reengagement, had been sent by the petitioner through an unknown person to the Range Officer Construction Khalani dated 18.8.2007 addressed to DFO Shimla. On receipt of this application, Range Officer, Khalini had asked that person to tell the petitioner to attend the office, personally, in this regard, but he (petitioner) never visited his office. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.
5. Pleadings of the parties gave rise to the following issues which were struck on 6.4.2010.
 1. Whether the services of the petitioner were terminated illegally and in an unjustified manner? . . .OPP.
 2. If issue no.1 is proved in affirmative, to what service benefits and amount of compensation, the petitioner is entitled to? . . .OPP.
 3. Relief.
6. Besides having heard the learned counsel for the parties I have also gone through the record carefully.
7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1	Yes.
Issue No.2	Entitled to reinstatement with seniority and continuity but without back wages.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue No. 1.

8. The contention of the petitioner is specific to this effect that on 31.5.2007, his services had been terminated orally and that in each calendar year, he had completed 240 days. On the other hand, the defence version is that the petitioner, on his own, had abandoned the job and that for this reason, the respondent did not violate any of the provisions of the Act including those as alleged by the petitioner.

9. Admittedly, the petitioner had been engaged as daily wage chowkidar by the respondent and that w.e.f. 1.6.2003 to 31.5.2007, he had continued to remain in service, as such. I may observe that the respondent has disputed this fact that the petitioner had remained engaged as daily wage chowkidar in construction unit Khalini, Forest Division, Shimla. According to them, he had remained as daily paid chowkidar w.e.f. 1.6.2003 to 31.5.2007 in construction unit Khalini for watch & ward of forest colony Mis Chamber, Khalini (hereinafter referred as Forest Colony) as per requirement of specific work. In my considered view, this court is not required to go into this aspect of the case as to where the services of the petitioner, as daily wage chowkidar, had been availed. This court has to ascertain, as to whether the petitioner had completed 240 days in the twelve preceding months from the date of his alleged termination and that his services were terminated in contravention of the provisions of section 25F of the Act and also that of section 25 G & H as alleged by him.

10. While appearing in the witness box as PW-1, the petitioner has supported all the material facts including that he had completed 240 days in every calendar year including the one preceding his termination and that on 31.5.2007, his services had been terminated orally by the respondent without notice and compensation. Besides having made oral requests, he had also made a representation in writing vide Ex. PW-1/A for his reengagement but of no avail. The post of chowkidar is still vacant, where he used to work. In the cross examination, he denied of having abandoned the job and also that he did not complete 240 days in each calendar year.

11. The statement of Shri K.S Thakur (RW-1), is to this effect that till 31.5.2007, the petitioner had remained engaged as daily wage chowkidar with the respondent and that thereafter, he abandoned the job. Ex. RB, is the copy of the mandays chart of the petitioner. The petitioner had not filed any application for his reengagement in the office. In the office of Range Officer, Khalini, an application, had been received from him through some unknown person, dated 18.11.2007, which was addressed to DFO Shimla. On the receipt of that application, Range Officer had asked that unknown person to tell the petitioner to come to the office in person but he did not turn up. In the cross examination, he denied that in each calendar, the petitioner had completed 240 days and that he had given Ex. PW-1/A, personally, in the office. He admitted this fact that no notice and compensation was paid to the petitioner.

12. Shri Ramesh Negi (RW-2) had remained as Range Officer construction range Khalini, Shimla w.e.f. 16.6.2003 to 25.8.2010. His version is to this effect that the petitioner had remained as daily wage chowkidar w.e.f. 1.6.2003 to 31.5.2007 for watch & ward of forest colony. In his office, he (petitioner) had never remained posted as daily wage chowkidar. On 31.5.2007, the petitioner had abandoned the job. He further stated that the petitioner had been engaged in violation of the terms and conditions of the notification, the copy of which is Ex. RA, issued by the

Government of Himachal Pradesh. In the cross examination, he denied that Ex. PW-1/A, had been given to him by the petitioner personally and that on 31.5.2001, his services had been terminated, orally, by the DFO.

13. Shri Prem Lal Sharma (RW-3), has supported this fact that the petitioner had remained as daily wage chowkidar for watch & ward of forest colony w.e.f. 1.6.2003 to 31.5.2007 and that he had abandoned the job.

14. From Ex. RB, mandays chart, it is revealed that the petitioner had worked for 214 days in 2003, 366 days in 2004, 365 days in 2006, 365 days in 2006 and 149 days in 2007 (May, 2007). From this document, it is abundantly clear that from the date of his alleged termination, the petitioner had completed 240 days in the twelve preceding calendar months. On the record, it stands duly proved that the petitioner had not been given one month's notice in writing indicating the reason for retrenchment or in lieu thereof, paid wages for the period of notice. Similarly, he had not been paid retrenchment compensation. Undoubtedly, the defence plea is to this effect that he had abandoned the job w.e.f. 31.5.2007 but there is no convincing and reliable evidence in support thereof. I may mention that had the petitioner abandoned the job, there is no material, on record, which could go to show that he had been given notice to resume his duties. On the contrary, the petitioner has stated that several times, he had made oral requests for his reengagement and ultimately, he made a representation, in writing, vide Ex. PW-1/A but of no avail. When the respondent has failed to show that any notice/communication had been sent to the petitioner to resume his duties, the version of the petitioner that he had made several request for his reengagement and also a representation in writing, Ex. PW-1/A, cannot be disbelieved. It has been held by our own Hon'ble High Court incase titled *State of HP & Others Vs. Bhatag Ram & Another, latest HLJ 2007 (HP) 903* that:

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

15. Consequently, in view of the law laid down supra as well as my above discussion, I hold that the services of the petitioner had been terminated in violation of the provisions of section 25F of the Act and that for this reason, the same is illegal and unjustified. Accordingly, my answer to this issue is in “Yes”.

Issue No. 2.

16. It is to be noted that there is no evidence, whatsoever, on record, brought by the petitioner which could go to show that after his termination/disengagement, he had remained not gainfully employed. For his failure, to bring evidence to this effect, that after having been disengaged/terminated from services, he remained not gainfully employed, I am of the considered view that, he does not deserve to be granted back wages. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that ***“full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”***. Since, his services were terminated in contravention of the provisions of the Act, I am of the considered view that, he is entitled to be reinstated in service with seniority and continuity but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service with seniority and continuity but without back wages from the date of his illegal termination/disengagement. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today this day of 1st September, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 11 of 2007.
Instituted on 27.2.2007.
Decided on.7.9.2010.

Raj Kumar S/o late Shri Prithi Chand R/o Village Dainda, P.O Totu, Tehsil & District Shimla, HP.

. .Petitioner.

VS.

1. The Managing Director, Himachal Pradesh State Corporation, Vikas Nagar, Block No.1, Kasumpti Shimla-9.
2. The Divisional Manager, Forest Working Division, Shimla-2.

. .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Rajesh Kumar, Advocate.

For respondent : Shri Peeyush Verma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Raj Kumar S/o Shri Prithi Singh workman by the (1) Managing Director, Himachal Pradesh State Corporation, Vikas Nagar, Block No.1, Kasumpti Shimla-9 92) the Divisional Manager, Forest Working Division, Shimla-2 w.e.f. 20.10.1995 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper & justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. Briefly, the case of the petitioner is that he had joined as daily paid chowkidar on 1.8.1987 and continued as such till 20.10.1995, when his services were orally terminated for the reason that he had been criminally prosecuted. In this regard, an FIR no. 11/96 under section 408, 379 and 411 IPC, had also been got registered at Police Station, Shimla west, on 12.1.1996, against him (petitioner). After due investigation, the challan had been put in the Court and ultimately, he was acquitted of the aforesaid charges by Ld. Judicial Magistrate (1), Shimla, vide judgment dated 1.8.2001. It is further averred that after his acquittal, he had approached the respondents, for his reengagement, by making applications dated 9.8.2001 and 1.12.2001, but of no avail and thereafter, he raised demand notice. It is further averred that he had been in continuous service as he completed more than 240 days in each calendar year and worked to the entire satisfaction of his superiors. On 20.10.1995, his services had been terminated without following the principles of natural justice as well as provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act) and that too without any rhyme and reasons. At the time of his termination, neither any notice, under section 25F of the Act, had been issued to him nor paid compensation. Against this backdrop, a prayer has been made for his reinstatement alongwith all the consequential benefits.

3. The petition has been contested on having raised various preliminary objections including maintainability, estoppel and jurisdiction. On merits, it has been denied that the services of the petitioner had been terminated, orally, on 20.10.1995 and that too without following the principles of natural justice. In fact, a case of theft had been registered against him and that he was called upon to explain his conduct but he (petitioner) instead of doing the needful, stopped attending the office and thus absented, himself, from duties w.e.f. 20.10.1995, without any reasonable cause or explanation. It is asserted that the petitioner cannot derive any advantage of his acquittal in the criminal case because he had remained absent from duties and that the respondent, being employer was within its legal right to deny the re-engagement. Since, he had been involved in a criminal case, for this reason, there has been loss of confidence and he has no right to be reinstated. It has been denied that had been made applications, as alleged, and that he completed 240 days. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues, which were struck on 15.2.2010.

1. Whether the termination of Shri Raj Kumar petitioner by Managing Director, HP SFC, Shimla and Divisional Manager Forest Working Division, Shimla-2 w.e.f. 20.10.1995 without complying the provisions of Industrial disputes Act, 1947 is improper and unjustified as alleged? . .OPP.
2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? . .OPP.
3. Whether the petition is not maintainable? . .OPR.
4. Whether the petitioner is estopped from filing the petition by his own act, deed, conduct and acquiescence? . .OPR.

5. Whether the petition is time barred? . .OPR.
6. Whether the petition is bad for non joinder of necessary party? . .OPR.
7. Relief.
6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.
7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1	Yes.
Issue No. 2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue No. 3	No.
Issue No. 4	No.
Issue No. 5	No.
Issue No. 6.	No.
Relief.	Reference answered in favour of the petitioner and against respondent, per operative part of award.

Reasons for findings

Issue No. 1.

8. Ld. Counsel appearing on behalf of the petitioner has urged that the services of the petitioner had been terminated, orally, without complying with the provisions of the Act, on the false ground of theft. Ld. Counsel further urged that since the petitioner had been acquitted by the Ld. court, he made several requests for his reengagement but of no avail. From the material, on record, it has been proved that juniors to the petitioner have been retained in service and for this reason, he also deserves to be reinstated alongwith all the consequential service benefits, Ld. Counsel submitted.

9. On the contrary, it has been submitted, on behalf of the respondents, that since the petitioner had remained absent from his duties and that his services had not been terminated by the respondents. Since, he had been involved in a criminal case, for this reason, the respondents had lost faith in him. Thus, there was no need for the issuance of notice, to him, notice under section 25F of the Act.

10. While appearing in the witness box, the petitioner (PW-1) has supported all the material facts, on oath, including that on 1.8.1987, he had been engaged as daily wage Chowkidar and continued to remain as such till 20.10.1995, when his services had been terminated, on false ground of theft. No enquiry had been got conducted against him. On 12.1.1996, a theft case had been registered against him. After his acquittal, he approached the respondents for his reengagement but of no avail. In every calendar year, he had worked for 240 days. His juniors are still continuing, who are made regular. In the cross examination, he denied of having remained absent, from service, w.e.f. 20.10.1995, without any reason. He further denied of having committed theft and that he abandoned the job, on his own.

11. According to Shri Jeet Ram (RW-1), who had been authorized to make statement, vide Ex. RW-1/A, the petitioner, had remained with the respondents w.e.f. 1.8.1987 to 20.10.1995, on which date, he abandoned his job without any information/intimation. In the year 1995-96, the petitioner had been caught in a theft case. The petitioner never approached the respondents for his reengagement.

12. It has been specifically stated by Shri Jeet Ram (RW-1) that the petitioner had never been terminated from service. In fact, he (petitioner) had abandoned the job, on his own, without any intimation/information. When regard is given to the cross examination of Shri Jeet Ram (RW-1), he admit this fact that the petitioner had completed 240 days in every calendar year from 1.8.1987 to 20.10.1995 and that no notice had been given. He (RW-1) further admit that no notice/letter had been issued to the petitioner in order to resume his duties.

13. The version of the petitioner (PW-1) that he had completed 240 days in each calendar year, has been supported by Shri Jeet Ram (RW-1). No doubt, the plea which has been taken by the respondent is that the petitioner had abandoned his job and did not turn up after 20.10.1995 but there is no evidence, on record, which could go to show that any letter/notice had been issued to the petitioner to resume his duties. It was required of the respondents to have issued him notice to resume his duties but in the instant case no such procedure had been followed by the respondents

before terminating his services. Thus, the defence plea that the petitioner had abandoned the job, on his own, is of no consequences particularly when the petitioner has stated that his services were orally terminated and he was not allowed to work. When the respondents fail to prove that the petitioner had abandoned the job, the version of the petitioner that his services had been orally terminated deserves to be believed.

14. As already stated above, the petitioner has proved to have completed 240 days in the preceding twelve calendar months from the date of his alleged termination. Thus, the respondent was required to issue notice and to pay compensation, in the prescribed manner, if his services were to be terminated. On the record, it stands proved, that neither any notice nor wages in lieu thereof and also retrenchment compensation was paid to the petitioner. Thus, his termination is held to be illegal and improper. Accordingly, my answer to this issue is in "Yes".

Issue No. 2.

15. It has not been alleged by the petitioner that he is unemployed. Moreover, before this court, it has not been stated by the petitioner (PW-1) that he is not gainfully employed. In these circumstances, I am of the considered view that, he does not deserve to be granted back wages. It has been held by the *Hon'ble Supreme court in 2010 (1) SLJ SC 70, M/s Ritu Marbals Vs. Prabhakant Shukla* that "**full back wages cannot be granted mechanically, ipon a order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the industry**". Since, his services were terminated in contravention of the provisions of the Act, I am of the view that he is entitled to be reinstated in service with seniority and continuity but without back wages. Accordingly, my answer to this issue is in "Yes".

Issue No. 3.

16. It is not understandable as to why this petition is not maintainable, particularly, when it has been filed in pursuance to the reference, having been made to this Court, by the Labour Commissioner. Apart from it, the learned Counsel for respondent could not explain as to why this petition is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in "No".

Issue No. 4.

17. As far as this issue is concerned, no specific evidence has been led by the respondent. Further, when the petitioner had raised an industrial dispute and the conciliation failed, a reference was made to this court by the appropriate government and in pursuance thereof, the petitioner filed his statement of claim. When, such is the position then it cannot be said that he is estopped from filing this claim by his act & conduct. Accordingly, my answer to this issue is in "No".

Issue No. 5.

18. It could not be explained by the respondents as to why this petition suffers from inordinate delay and latches. Their lordships of Hon'ble Supreme Court in (1999) 6 SCC 82, *Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another* have held as under:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

19. Consequently, in view of law laid down by Apex Court, I hold that this petition is not time barred, to which my answer is in "No".

Issue No. 6.

20. There is no material, whatsoever, on record, which could go to show that as to why the claim of the petitioner is bad for non-joinder and misjoinder of necessary parties. Moreover, at the time of arguments, it could not be explained, on behalf of the respondent, that as to why and in what manner the claim of the petitioner is bad for non-joinder and misjoinder of the necessary parties. Consequently, my answer to this issue is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 20.10.1995. Consequently, the reference stands answered in favour of the petitioner and against respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette.

File, after completion be consigned to records.

Announced in the open court today this day of 7th September 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 15 of 2010.
Instituted on 12.4.2010.
Decided on 30.9.2010.

Vakila Begum W/o Shri Rafic Ahmed R/o Ranital Nahan, District Sirmour, HP.

. .Petitioner.

Vs.

The Factory Manger M/s Accura Care Pharmaceuticals, Pvt. Ltd., Village Moginand, Nahan Road, Kala Amb,
District Sirmour, HP.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : None.

For respondent : Shri Sunil Chauhan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether the termination of services of Vakila Begum W/o Shri Rafic Ahmed by the Factory Manger M/s Accura Care Pharmaceuticals, Pvt. Ltd., Village Moginand, Nahan Road, Kala Amb, District Sirmour, HP w.e.f. 17th July, 2009 without complying with the provisions of the Industrial disputes Act, 1947 is proper and justified? If not, to what back wages, seniority, service benefits and relief the above named workman is entitled to?”

2. At the very out set, I would like to point out that although, repeated efforts had been made by this court in order to procure the service of the petitioner but all in vain. Faced with such situation and also keeping in view the legal proposition, that a reference is required to be answered by this court, I decided to proceed with to answer the reference, on the basis of material, whatsoever, is available on the file.

3. Since, the petitioner could not be served despite repeated efforts and for this reason, she did not file statement of claim, no reply was filed by the respondent, pursuance to the reference having been made to this Court.

4. It is highlighted that Smt. Vakila Begum (petitioner) was terminated from service w.e.f. 29.7.2009 by the respondent (The Factory Manger M/s Accura Care Pharmaceuticals, Pvt. Ltd., Village Moginand, Nahan Road, Kala Amb, District Sirmour, HP) without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act). Since, it has been alleged that her services were terminated in violation of the provisions of the Act, a prayer has been made for reinstating her in service alongwith all the consequential benefits including back wages.

5. As already observed, no statement of claim has come on record. There is also no such document, on record, which may go to show that the services of the petitioner had been terminated in contravention of the provisions of the Act. In these circumstances, when there is no material, whatsoever, on record, to support the claim of the petitioner, I have been left with no other alternative but to decide this reference against her. Accordingly, the reference stands answered against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today this day of 30th September 2010.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ref no. 27 of 2005.

Instituted on 9.3.2005.

Decided on. 10.9.2010.

Raj Preet Singh S/o Shri Ajit Singh C/o Shri J. C. Bharddwaj, HQ Saproon Tehsil & District Solan, HP.

. .Petitioner.

VS.

The Managing Director M/s Surya Pharmaceuticals Ltd., Baddi, Solan, HP.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Narinder Sharma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Raj Preet Singh S/o Shri Ajit Singh, workman by the management of M/s Surya Pharmaceuticals Ltd., Baddi, Solan, HP w.e.f. 2.9.2001 without conducting any domestic enquiry and complying the provisions of the Industrial Disputes Act, 1947 is proper & justified? If not, what relief of service benefits Shri Raj Preet Singh is entitled to?"

2. Briefly, the case of the petitioner is that he had been appointed as Chemist on 7.8.1999 and further granted approval as Manufacturing chemist on 20.9.2000 and since then he kept on performing his duties as Manufacturing Chemist till his illegal removal from service. Being a Manufacturing Chemist, he had been performing the manual as well as technical work to make medicine from raw materials by manufacturing process to the finished goods i.e saleable medicines in the market for human treatment and to safeguard human health and as such, the work involved, was to satisfy human needs and wants. The manufacturing process involved skilled manual working, throughout, by the chemist. In his such capacity, none had worked under his subordination during his service tenure and further that he was neither entrusted with any administrative powers nor was anyone working under his supervision. For this reason, his services were duly covered under the definition of 'workman'. The designated post of Chemist only carried the meaning, as of skilled workman, for all purposes, especially when, he (petitioner) was never vested with any administrative powers such as to sanction leave and to dismiss anyone. It is alleged that his services were illegally and arbitrarily shown to have been suspended on false and flimsy ground on 12.9.2001 on serious charge of theft. Subsequently, an FIR had also beengot lodged against him with the Police. On 24.9.2001, he was also served with a so called chargesheet, after his removal on 2.9.2001, vide which he was blamed for the act of fraud and cheating. By filing reply, he had denied the charges. It is further averred that the management had never proposed to hold an enquiry, in the chargesheet, which they had submitted against him and thus, without holding any enquiry, his services were deemed to have been terminated on 2.9.2001, as he had not been paid any subsistence allowance. In case, he had been under suspension, he was required to be paid subsistence allowance but despite his request, the same was not paid to him. Before his termination, he was also in continuous service for the purpose of section 25B of the Industrial Disputes Act, 1947 (hereinafter referred Act). The respondent also did not comply with the provisions of section 25N of the Act, since, neither he was served with a three months' notice nor paid the compensation. Besides, the approval of the government had also not been obtained before terminating his services. The manner, in which his services were terminated, he deserves to be reinstated alongwith all the consequential benefits including back wages.

3. The claim of the petitioner has been contested on having raised various preliminary objections including maintainability and that the petitioner is not a workman as defined under section 2 (s) of the Act. On merits, it has been asserted that since the petitioner had been involved in the theft of Amoxicillin, an FIR No. 100 of 2001 dated 3.9.2001 was got registered against him, in respect of the theft and pilferage of the company property, and that he was put under suspension on 12.9.2001. It has been further specifically maintained that the petitioner had been discharging supervisory, managerial and administrative functions and that he was the incharge of number of workers and in discharge of his such duties, he was responsible for the work and conduct of those workers. In fact, the administrative control of the plant vested with him (petitioner) and that he was controlling the overall affairs of the company. For the said theft, he had been charge-sheeted but as his conscience pricked him, he sent his resignation with the prayer to accept it, which was acceded to and accordingly, he was relieved and the matter relating to his charge sheet was subsequently dropped. In fact, he had submitted his resignation during the investigation being carried out by

the Police and after the issuance of chargesheet to him. It is further maintained that proceedings for misconduct could proceed even during the pendency of criminal proceedings and that an acquittal in a criminal case cannot take away the right of an employer to proceed against a delinquent employee in a departmental enquiry. Further, the petitioner had not completed 240 days of continuous service and that no principles of natural justice had been violated. Other allegations denied.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues, which were struck on 7.9.2007.

1. Whether the services of the petitioner have been terminated illegally by the respondent w.e.f. 2.9.2001 without complying with the provisions of Industrial Disputes Act, 1947? If so its effect? . . .OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . .OPP.
3. Whether the present petition is not maintainable as the petitioner is not a workman? . . .OPR.
4. Whether the petitioner is gainfully employed? If so, its effect? . . .OPR.
5. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes
Issue no.2	Entitled to reinstatement with seniority and continuity but without back wages
Issue no.3	No.
Issue no.4	Yes.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue No. 1.

7. Admittedly, the petitioner had been put under suspension, on 12.9.2001. It is also not a disputed fact that an FIR had been registered against him and that on the basis of the investigation which had taken place, consequent thereupon, the petitioner had faced a criminal trial alongwith others and that as per judgment dated 1.11.2004, the copy of which is Ex. PA, he, alongwith others, was acquitted of the charges. It is further to be noted that there is no material, whatsoever, on record, which could go to show that the petitioner, on having been put under suspension, was paid any subsistence allowance. As far as the serving of chargesheet, on the petitioner, is concerned, this fact also remains undisputed. Whereas the contention of the petitioner is that his services stood deemed to have been terminated, on 2.9.2001, the defence plea is to this effect that the services of the petitioner had not been terminated but on the contrary, he had resigned from his job, vide resignation letter Ex. R-1/D, which was accepted and that he had also been paid his dues by way of full & final settlement vide receipt/voucher Ex. RW-1/E. Since, the petitioner had himself resigned, no domestic enquiry was proposed to be conducted against him.

8. The petitioner while appearing in the witness box as PW-1, has supported all the material facts, on oath, including that since 2.9.2001, he had continued to remain in the service of the respondent, when on a false case of theft, which had been got registered against him by the management of the respondent company, his services were terminated. After terminating his services, he was served with a chargesheet which contained the same allegations, as were made in the FIR. The respondent did not get those charges, against him, to be proved by holding an enquiry. In the criminal case, which had faced before SDJM, Nalagarh, he was acquitted, as per copy of judgment, Ex. PA. In the cross examination, he denied of having submitted his resignation but admitted that for the last 2/3 years, he had been suffering from Jaundice.

9. Shri Ambrish Sharma (RW-1), authorized by resolution dated 31.3.2009, has stated from the relevant record that the petitioner had been engaged as manufacturing chemist in order to do supervisory work and that in that capacity, he was also having the administrative control of the plant. Since, he was involved in a theft, an FIR was got registered, on 3.9.2001 and that on the basis of preliminary enquiry, he was suspended vide Ex. R-1/A. Vide Ex. R-1/B, he was served with chargesheet through registered post and that to the same, he had filed reply. Thereafter, an enquiry was initiated against him but at the initial stage, he submitted his resignation, vide Ex. R-1/D and that vide Ex. RW-

1/E, he was also paid his full & final payment. Vide letter/application, Ex. RW-1/F, the petitioner had also claimed dues upto March, 2002, which letter was duly replied vide Ex. RW-1/G. In the cross examination, he admitted that vide Ex. RW-1/F, the petitioner had claimed subsistence allowance but denied that Ex. RW-1/E, does not bear his signatures. He further denied that on Ex. R-1/D, the signatures of the petitioner had been forged but admitted that it does not contain any date. Regarding acceptance of the resignation, he has not brought any letter. He could not say as to on which date, the resignation of the petitioner was accepted. In Ex. RW-1/E, the date mentioned is 3.1.2001. He denied that the chargesheet had been issued to the petitioner after full & final settlement which is dated 3.1.2001 as per Ex. RW-1/E. He (RW-1) explained that on Ex. RW-1/E, the date is 3.1.2002.

10. From the statement of Shri Ambrish Sharma (RW-1), it is abundantly clear that no enquiry had been got conducted against the petitioner for the reason that he had submitted his resignation. According to him, the petitioner had submitted his resignation, Ex. R-1/D, which was accepted by the respondent management but I may observe that when the statement of the petitioner was being recorded, this resignation letter was not put to him. The petitioner (PW-) has categorically denied of having submitted his resignation and also that resignation letter Ex. R-1/D, bears his signatures. He has also denied his signatures on receipt/voucher of Ex. R-1/E. Since, no enquiry had been got conducted against the petitioner, for the allegations, as levelled against him, as per chargesheet which was served upon him, it was required of the respondent management to have proved, with specific and convincing evidence, that the enquiry was not got conducted since, the petitioner had resigned vide Ex. R-1/D. In case, the petitioner had submitted his resignation, it was to contain the date, on which the resignation had been tendered. Moreover, his such resignation was to be received by the respondent management, in its office, and in this regard, there had to be either endorsement on the alleged resignation letter itself, or it should have been entered in other register, maintained, in order to receive the Dak/letters. Furthermore, if the petitioner had submitted his resignation vide Ex. R-1/D, the same was to be accepted by the respondent management and accordingly, he was to be communicated in this regard. Before this court, no such record has been produced which could go to show that the management had accepted the resignation of the petitioner and that in this regard, he had been informed. Similarly, the payment of dues to the petitioner, as full and final, vide Ex. RW-1/E, also remains doubtful, particularly, when the date on it, is considered, which as per Shri Ambrish Sharma (RW-1), is 3.1.2001. It is further to be mentioned that vide Ex. RW-1/F, the petitioner had requested the respondent management to pay him subsistence allowance. The perusal of this letter goes to show that it is dated 4.4.2002 and that the same had also been replied by the respondent management vide Ex. RW-1/G, which is dated 27.4.2002. This letter clearly goes to show that he had not been paid any subsistence allowance after having been put under suspension. In these circumstances, when the defence version that the petitioner had tendered his resignation, which had been accepted, is not proved, the contention of the petitioner that his services were deemed to have been terminated w.e.f. 2.9.2001 (**should have been 12.9.2001**), can be said to have been proved. Moreover, from the copy of judgment dated 1.11.2004, Ex. PA, it is further borne out that he had been acquitted in the criminal case, which he had faced before Ld. SDJM, Nalagarh, District Solan, HP. On the basis of the findings of criminal court, coupled with the fact that the respondent management had not got proved the charges, as levelled against the petitioner, by serving upon him the chargesheet, I have no hesitation in holding that the services of the petitioner had stood terminated w.e.f. 12.9.2001, illegally and not w.e.f. 2.9.2001, as is the case of the petitioner and also as per the reference. It may be reiterated that even, he (petitioner) had not been paid any subsistence allowance and that his alleged termination was also in contravention of the provisions of section 25-N of the Act. Resultantly, my answer to this issue is in "Yes".

Issue no.4

11. The petitioner has alleged that since the date of his illegal termination i.e 2.9.2001(**should have been 12.9.2001**), he has been unemployed. The defence plea is to this effect that the petitioner has been working in Pharmaceutical company at Baddi and earning more than 25000/- per month, besides having income of Rs. 10,000/- from his landed property. It is to be noted that initial onus was on the petitioner to prove that since the time of his alleged termination, he has been unemployed and for this reason, has no income. It is true that in his petition, he has alleged to be unemployed but when regard is given to his statement, before this Court, as PW-1, he has not stated even a single word that he is not gainfully employed. His version is to this effect that he be reengaged with all the service benefits including back wages. In this way, there is no evidence, whatsoever, on record, which could go to prove that the petitioner is not gainfully employed. It is to be mentioned that in the statement of Shri Ambrish Sharma (RW-1), it has not come that the petitioner is employed in some Pharmaceutical company at Baddi and earning more than 25,000/- per month, as is the defence plea, but on that score, it cannot be said that the respondent has failed to prove this issue, the initial onus of which was upon the petitioner. Thus, keeping in view the statement of the petitioner (PW-1), wherein he has not stated himself to be not gainfully employed, I hold that this issue stands proved to which my answer is in "Yes".

Issue No. 2.

12. While deciding issue no.4, above, I have already held that, on the record, it has not been proved that the petitioner has not been gainfully employed. Further, having regard to the period, for which, he had remained in service

of the respondent before his services stood terminated, I am of the view that he does not deserve to be granted back wages. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that ***"full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry"***.

13. However, since his services had stood terminated in contravention of the provisions of the Act, I hold that the petitioner is entitled to reinstatement in service with seniority and continuity but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No. 3.

14. As per the respondent, since the petitioner, being in the employment, as Manufacturing Chemist, had been performing managerial and supervisory duties, he did not fall within the definition of 'workman' as defined under section 2 (s) of the Act. In the statement of Ambrish Sharma (RW-1), it has come that the petitioner was performing supervisory duties/functions and that he had been authorized to instruct and get work done from the workers who were under his supervision. He also used to sanction the leave of the workers and that he was in the administrative control of the plant. On the contrary, the petitioner has categorically stated that in his capacity, as chemist, he was not having any administrative powers and that under his supervision, no worker was working. Since, he was a formulation chemist, he had been doing work manually.

15. It is to be mentioned that the respondent management has not brought, on record, the appointment letter of the petitioner which could have gone to show the terms and conditions of his appointment in the job. It is further to be stated that the respondent has also not brought, any record, to the effect that the petitioner had been performing supervisory duties/functions and that there had been workers, working under him in such capacity and that he used to sanction their leaves etc. It is further to be observed that the existence of subordinates, whose work is required to be supervised, is a sine qua non to prove supervisory work. From the statement of Shri Ambrish Sharma (RW-1), it is not proved that the petitioner was performing his duties in the capacity of supervisor. Thus, it cannot be said that the petitioner did not fall within the definition of workman as given under section 2(s) of the Act. Accordingly, the respondent fails to prove this issue, to which my answer is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, ***from the date when his services stood terminated i.e 12.9.2001, as held by me and not w.e.f. 2.9.2001, as per the reference.*** Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 10th September, 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla, Camp at Solan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 34 of 2008.
Instituted on 30.6.2008.
Decided on. 15.9.2010.

Madan Singh S/o Shri Sher Singh R/o B-32, Phase-III, Industrial Area, Mohali, Punjab.

. .Petitioner.

VS.

1. The Managing Director M/s Sigma Vibra Coustic (India) Ltd., D-126, Industrial Area, Phase-7, Mohali, Punjab, 160005.
2. The Manager, Dutta Mashroom Farm, District Solan, HP.

3. The Manager, 18- Shimla View (Hill Top) Subathu, District Solan, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Bhupinder Sharma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Madan Singh S/o Shri Sher Singh by the 1) Managing Director M/s Sigma Vibra Coustic (India) Ltd., D-126, Industrial Area, Phase-7, Mohali, Punjab, 160005 2) the Manager, Dutta Mashroom Farm, District Solan, HP 3) the Manager, 18- Shimla View (Hill Top) Subathu, District Solan, HP w.e.f. 25.2.2006 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is legally and justified? If not, what amount of back wages, seniority, past service benefits and compensation, the above worker entitled to from the above employers”?

2. Briefly, the case of the petitioner is that he was appointed as watchman (chowkidar) by respondent no.1, on 25.1.1994, at Mohali and that at that time, the respondent company was working under the name and style of M/s Sigma Industries Corporation Ltd., D-126, Industrial Area, Phase-VII, Mohali. In this way, he had continued to remain in the service of respondent till the beginning of the year, 1996. Thereafter, he was transferred from Mohali to Kasauli and deployed there as watchman to look after the newly owned property of respondent no.1, known as Datta Mashroom Farm, Kasauli. There, he (petitioner) remained working till 8.5.2003. During the said tenure, respondent no.1 continued to pay his wages and dues etc. being his employer. Then, he was transferred from Kasauli to Subathu where he was deployed as chowkidar-cum-care taker to look after the guest house of the company (Hill Top) Since, he had remained deployed in far away places like Kasauli and Subathu, he made a representation to respondent no.1 to transfer him back to Mohali, as, he (petitioner) was the resident of Mohali. Since, he had also remained sick, from time to time, he used to get treatment from PGI Chandigarh, during those days but his request, for transfer to Mohali, was never considered by the management of the company. On 1.2.2006, he had fallen seriously ill and remained admitted in the hospital w.e.f. 9.2.2006 till 23.2.2006. When, he was declared fit, on 25.2.2006, he reported the respondent company alongwith certificate of fitness but his joining report was not accepted. On the contrary, he was told that his services were not required and that in this manner, the same stood terminated w.e.f. 25.2.2006. It is further averred that from the date of his joining the service of the respondent, till his alleged termination, he had performed his duties to the best of his abilities and that his services were terminated, without notice or chargesheet, against the principles of natural justice. Apart from this, his alleged termination dated 25.2.2006, also does not disclose due application of mind, on the part of respondent no.1 because without holding any enquiry, his services were terminated. During the tenure of his service, he had also completed 240 days in the calendar year including twelve calendar months preceding his termination. Besides, the respondent has also employed a new person in his place and thus contravened the provisions of section 25G & H of the Industrial disputes Act, 1947 (hereinafter referred as Act), apart from that of section 25-B. Since, his services were terminated against the provisions of the Act, he deserves to be reinstated alongwith all the consequential benefits.

3. The petition has been contested on having raised preliminary objections including maintainability. On merits, it has been specifically denied that the petitioner had been engaged by the respondents and that there has been any relationship of employee and employer between the parties. It has further been asserted that for getting employed/engaged an employee, an application is required to be filed and after following due course i.e holding an interview, the selection of the candidate is made, who is given appointment letter. Besides, an employee is also got issued EPF and ESI nos. etc. and his name is entered in the daily as well as monthly register. It has further been pleaded that neither the petitioner had ever filed any application for appointment nor he was selected. Hence, his claim is totally false.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 14.10.2006.

1. Whether the termination of services of petitioner by the respondents w.e.f. 25.2.2006 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ..OPP.
2. If issue no.1 is proved, to what amount of back wages, past service benefits and compensation, the petitioner is entitled to? ..OPP.
3. Whether the petition is not maintainable in the present form? ..OPR.

4. Relief.

6. I have heard the learned AR for the petitioner and Ld. counsel for the respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	No.
Relief.	Reference answered against the petitioner, per operative part of award.

Reasons for findings

Issue No. 1.

8. Ld. AR for the petitioner has submitted with vehemence that from the statement of the petitioner, it stand duly proved that he had been employed in the service of the respondent company and that without notice and compensation, his services were terminated. Ld. AR further invited my attention towards Ex. PA & PB, the photocopy of the identity cards of the petitioner, in order to buttress his contention that these documents go to show that the petitioner was in the employment of the respondent company. Since, the services of the petitioner had been terminated without chargesheet and conducting any enquiry, the same has been in contravention of the provisions of the Act, Ld. AR submitted.

9. On the other hand, it has been argued on behalf of the respondents that since, the petitioner has failed to prove himself to be the employee of the respondent company, no question arises of his alleged termination and that also of his having completed 240 days. Ld. Counsel submitted that in case, the services of the petitioner had been engaged by the respondent company, he was to be given appointment letter and his attendance was to be marked in the attendance register besides being paid wages against proper receipt. In case, he had been in service of the respondent, he was also to be got issued ESI & EPF nos. Thus, the petitioner has miserably failed to prove himself to be the employee of the respondent company and for this reason, his contention, to have been illegally terminated, in contravention of the provisions of the Act, is totally false.

10. Petitioner (PW-1) has supported all the facts, as narrated in the petition, on all material particulars, including that initially, in the month of Jan., 1994, he had been engaged as Chowkidar in the respondent company at Mohali and thereafter, he was transferred to Datta Mashroom Farm, Kasauli, belonging to the respondent company, where he worked w.e.f. 1995 till 2003 and later on transferred to 18 Shimla View Sbathoo, guest house, belonging to the respondent company. There, he had worked w.e.f. 2003 to 25.3.2006, when his services were terminated. At that time Shri Mangat Ram had taken charge from him. No notice or compensation had been paid to him before terminating his services. Ex. PA & Ex. PB, are the photocopies of his identity card, which are correct as per the original, brought by him. In the cross examination, he stated to have no proof to the effect that he had applied for job in the respondent company and that no appointment letter had been issued in the year, 1994, in his favour. He also does not have EPF and ESI nos. When, he was initially engaged, Shri Kulveer Singh, was the GM at Mohali. He had not been issued any transfer letter qua his transfer to Kasauli. He denied that his claim is false and that the identity cards had not been issued by any officer/official of the respondent company.

11. Shri Subhash Chand (RW-1), Manager (HR), Sigma Vibra Coustic (p) Ltd. has stated on the basis of authority letter Ex. PA, that whenever a person is employed in the respondent company, an application is invited from him and thereafter, on the basis of interview, an appointment letter is issued accompanied with a declare form of EPF, on the basis of which, EPF no. is allotted and that similarly, a declare form of ESI is also got filled up and on the basis of same, ESI corporation issues the identity card. The employee so appointed, is required to mark his attendance regularly, and that every month, he is paid wages after deducting ESI & EPF. Annual statement is issued by the office of PF. The respondent company (Sigma Vibra Courstic) (*should have been Sigma Fonix India*) is a private company vide Ex. PB, registered on 8.10.1997. Thereafter, on 9.2.2001, its name was changed to Sigma Vibra Courstic India, vide Ex. PC and that Ex. PD & Ex. PE, are the detail of the employees of the company and all the employees are having ESI & EPF nos., which have been mentioned in Ex. PF. The copy of the attendance register is Ex. PG. The petitioner had never remained in the employment of the company. In the cross examination, he has denied the version of the petitioner, on all material counts.

12. From the statement of Shri Subhash Chand (RW-1), it is abundantly clear that, whenever, a person is employed in the respondent company, he is required to file an application and thereafter, on the basis of interview, he is

selected and an appointment letter is issued, accompanied with EPF declare form, on the basis of which EPF number is allotted to the employee, so appointed, and the employee is also required to fill up the declare form of ESI and thereafter, he is issued identity card by the corporation (ESI). He has further made it clear that from the salary of an employee, EPF & ESI are deducted and he (employee) is made to mark his attendance regularly. Although, the petitioner (PW- 1) has stated to have been engaged by the respondent company in the month of Jan., 1994 but he has no brought, on record, any appointment letter in support of his such version. He has also admitted this fact that he had not be allotted any EPF & ESI numbers and that regarding his transfer to Kasauli, no transfer letter was issued. The respondents have brought, on record, Ex. PD & Ex. PF, which go to show the names of the employees, working in the respondent company and their EPF & ESI numbers. Ex. PG, is the photocopy of the attendance register of the respondent company, from the year, 1999 to 2006. In the aforesaid documents, the name of the petitioner does not figure. At this stage, I would like to point out that in case, the petitioner had been the employee of the respondent, he was to be paid the salary/wages against proper receipt. When regard is given to the statement of the petitioner (PW-1), it is revealed that he has not stated that whether he was not being paid salary, in cash or through cheque. In case, his salary was being paid in cash, the same was to be received by him against his signatures on some register, maintained in this regard. In case, the salary had been paid to him by cheque, he could have proved this fact by bringing on record, the photocopies of the cheques or by taking requisite steps to get the relevant record, in respect of his payment of salary through cheque, from the concerned Bank. Similarly, the steps could have been taken, by him, for getting produced the salary register, maintained by the respondent company, through which, either he had been paid salary or the same had been received by him. I may also like to point out that the petitioner has also not examined Shri Mangat Ram, who as per his version as PW- 1, had taken the charge from him. Undoubtedly, on the record, he has brought the photocopies of identity cards Ex. PA & Ex. PB but from these identity cards, it is not proved that he had been engaged/appointed in service by the respondent company. Moreover, the perusal of these identity cards goes to show that they do not bear the name of the officer/official, who had issued the same. Thus, without any hesitation, I hold that the petitioner has miserably failed to prove that he had been in the employment of the respondent company. For his failure to prove this fact, his contention to have been dismissed from service w.e.f. 25.2.2006, in an illegal and unjustified manner, in contravention of the provisions of the Act, also does not hold good. Thus, he fails to prove this issue, to which my answer is accordingly in "No".

Issue No. 2.

13. In view of my findings on issue no.1 above, this issue becomes redundant.

Issue No. 3.

14. It is not understandable as to why the petition, in the present form, is not maintainable, particularly, when it has been filed in pursuance to the reference, made to this Court, by the Labour Commissioner. Apart from it, the learned counsel for the respondents could not explain as to why this petition, in the present form, is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 15th September, 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 36 of 2009.
Instituted on 27.4.2008.
Decided on 20.9.2010.

Jagdish Verma R/o Village Lachog, P.O Anji, Tehsil Kandaghat, District Solan, HP.

. .Petitioner.

VS.

The Managing Director, M/s Indus Cosmeceuticals, 79, Industrial Area Shoghi, District Shimla, HP.

. Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: None.

For respondent: Ms. Meena Thakur, Advocate Vice Shri Rahul Mahajan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Shri Jagdish Verma by the Managing Director, M/s Indus Cosmeceuticals, 79, Industrial Area Shoghi, District Shimla, HP w.e.f. 17.5.2007 without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to.”

2. At the very outset, I would like to point out that when this case was fixed on 2.7.2010, the petitioner, on having been served, had failed to put his presence before this Court. Despite that, it was thought expedient that since, a reference cannot be dismissed in default and required to be decided on merits, again, it was ordered that notice be issued to the petitioner so that he may put his presence before this Court and file statement of claim. In these circumstances, when repeated efforts were made by this Court in order to procure the presence of the petitioner since 3.7.2009 and that he failed to put his presence even, on 2.7.2010, when he had been duly served, I have been left with no other alternative but to proceed with to decide this reference on the basis of material, whatsoever, is available on the file. It is highlighted that the services of the petitioner had been terminated w.e.f. 27.5.2007, without having complied with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act). Since, as per the petitioner, his services had been terminated in contravention of the provisions of the Act, as per the reference, it has to be ascertained as to for what service benefits, he is entitled to, if it is held by this Court that his services had been terminated against the provisions of the Act. As already stated, no statement of claim has been filed by the petitioner. The respondent also did not file reply as per the reference, which has been made to this court despite having been afforded opportunity.

For the failure of the petitioner to have put up his claim before this Court by way of filing statement of claim and further that there is no evidence, whatsoever, which may go to show that his services had been terminated in contravention of the provisions of the Act, I have no hesitation in holding that for want of evidence and statement of claim, the contention of the petitioner, as is borne out from the reference that his services had been terminated w.e.f. 17.5.2007, in contravention of the provisions of the Act, is not substantiated. Thus, the reference is answered against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today this day of 20th September, 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 47 of 2008.
Instituted on 23.8.2008.
Decided on.15.9.2010.

Chet Ram S/o Shri Rai Ram R/o Village Gaura, P.O Dhar Gaura, Tehsil Rampur, District Shimla, HP.

. Petitioner.

VS.

The Executive Engineer, Electric Division HPSEB, Rampur Bushahr, District Shimla, HP.

. Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Rahul Kashyup, Advocate.

For respondent: Shri Chandan Goel, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Chet Ram S/o Shri Rai Ram by the Executive Engineer, Electric Division HPSEB, Rampur Bushahr, District Shimla, HP w.e.f. 25.5.1999 without complying the provisions of section 25F & 25N of the the Industrial Disputes Act, 1947 and retaining junior workmen as alleged by the workman is legal & justified? If not, what back wages, seniority, service benefits and relief, the aggrieved workman is entitled to?"

2. Briefly, the case of the petitioner is that he had been engaged as daily wage worker by the respondent, on 1.5.1986 and continued to remain as such till the year, 1999, when he had been retrenched illegally and arbitrarily. Against this, he had filed an OA no. 1692/2000 before the Administrative Tribunal, which was disposed of for want of jurisdiction. It is further maintained that he had been discharging his duties to the entire satisfaction of his superiors and completed 240 days in each calendar year, including twelve calendar months preceding his retrenchment. On 24.5.1999, by issuing a notice, his services were terminated without complying with the provisions of law which is against the mandatory provisions of section 25F, 25G & H of the Industrial disputes Act, 1947 (hereinafter referred as Act). It has further been averred that juniors to him (petitioner) S/Shri Chattar Singh, Mohan Lal and Smt. Ram Dassi, have been retained by the respondent. Against this backdrop, a prayer has been made that his order of termination be quashed and that he (petitioner) be reinstated, in service, alongwith all the consequential benefits including back wages.

3. The petition has been contested on having raised various preliminary objections, including maintainability and limitation. On merits, it has been asserted that the petitioner had been engaged as casual labourer, on muster roll basis, against specific work w.e.f. 1.5.1986 and worked upto 24.5.1999, with certain interruption/breaks. Since, the services of the petitioner had been engaged against specific work and after the completion of work, his services were not required, for this reason, his retrenchment is not illegal and arbitrary. The services of the petitioner had been terminated by serving a notice upon him. It has further been asserted that the petitioner used to remain absent from his service/job. It has been denied that new persons have been engaged. As far as S/Shri Mohan Lal and Chatter Singh are concerned, their services had been reengaged in pursuance to the order dated 12.2.1999, passed by State Tribunal whereas Smt. Dassi Devi had been engaged on compassionate grounds. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues, which were struck on 8.3.2010.

1. Whether the termination of services of petitioner by the respondent w.e.f. 25.5.1999 without complying with the provisions of section 25F & 25N of the Industrial Disputes Act, 1947 and retaining junior workmen is illegal and unjustified as alleged? . . .OPP.

2. If issue no.1 is proved, to what back wages, seniority, service benefits and relief, the petitioner is entitled to? . . .OPP.

3. Whether the petition is bad for non joinder of necessary party? . . .OPR.

4. Whether the petitioner is estopped from filing this petition by his own acts, deed and conduct as alleged? . . .OPR.

5. Whether the petition is time barred? . . .OPR.

6. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Issue no.4	No.
Issue no.5	No.

Relief. Reference answered in favour of the petitioner and against respondent, per operative part of award.

Reasons for findings

Issue No. 1.

8. Ld. Counsel appearing on behalf of the petitioner has urged that the services of the petitioner had been terminated without any reason and that too without complying with the provisions of the Act. Ld. Counsel further urged that the petitioner had completed 240 days in the twelve calendar months preceding his termination and that neither any notice under section 25F of the Act had been given to him nor paid compensation. From the material on record, it has been proved that juniors to the petitioner have been retained in service and that for this reason, he also deserves to be reinstated alongwith all the consequential service benefits, Ld. Counsel submitted.

9. On the contrary, it has been submitted on behalf of the respondent that since the petitioner had been engaged against specific work and that after the completion of the work, his services had automatically come to an end, for this reason, there was no need to serve notice under section 25F of the Act. Moreover, a notice, Ex. RP-2, under standing orders had been given to the petitioner.

10. While appearing in the witness box, the petitioner (PW-1) has filed affidavit, Ex. PA, in which, he supported all the material facts, on oath, as narrated in the petition. In the cross examination, he admitted his mandays chart Ex. RP-1 and that Ex. RP-2, had been issued to him by the respondent when the work was finished. He denied that he used to remain absent. He admitted that S/Shri Chattar Singh etc. had been engaged on the order of State Tribunal and that Smt. Ram Dassi, had been engaged on compassionate grounds but further clarified that they are junior to him.

11. Shri Molak Raj (RW-1), has stated that the Petitioner, had remained with the respondent w.e.f. 1.5.1986 to 24.5.1999 with breaks. The mandays chart of the petitioner is Ex. RP/1. The petitioner had been engaged for a specific work and on the completion of the same, his services stood terminated vide notice Ex. RP/2. S/Shri Mohal Lal and Chattar Singh had been engaged on the order of the Court, copy of which is Ex. RW-1/A. Vide Ex. RW-1/B, the petitioner had withdrawn his OA. The petitioner had never remained regular in his job. Smt. Ram Dass, had been engaged on compassionate grounds. In the cross examination, he admitted that as per Ex. RP-1, the petitioner had completed 240 days.

12. The statement of the petitioner (PW-1) goes to show that he admits of having received a notice, Ex. RP-2, from the respondent, as per which, his services were no longer required w.e.f. 25.5.1999. He further made it clear that he had completed 240 days in every calendar year as per mandays chart Ex. RP-1 and that before terminating his services, neither any notice, under section 25F of the Act, nor compensation was paid to him. Besides, juniors to him have been retained by the respondent after his termination. The perusal of mandays chart Ex. RP-1, goes to show that in the twelve calendar months preceding his termination, the petitioner had completed 240 days. It is true that as per the contention of the respondent, the services of the petitioner had stood terminated, automatically, on 25.5.1999, since on the said date, the work against which he had been engaged stood completed but in my considered view, the petitioner was required to be given notice in terms of section 25F of the Act besides payment of retrenchment compensation. In the statement of Shri Molak Raj (RW-1), it has come that the petitioner had been served with notice of termination, under the standing orders, which is Ex. RB-2 but there is no evidence, whatsoever, which could go to show that he had also been paid retrenchment compensation as per section 25F (b) of the Act. ***In 2003 LLR 470, S.M Nilajkar & others Vs. Telecom District Manager, Karnataka***, it has been held by the Hon'ble Supreme Court that :

“The closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned”.

13. Having regard to the law laid down by the Hon'ble Supreme Court, it was incumbent upon the respondent to have paid retrenchment compensation to the petitioner as per section 25F of the Act, even if the work, against which he had been engaged, was to be closed, on its completion. At this stage, I would also like to point out that when the services of the petitioner had been engaged, nothing such, is proved to have been brought, on record, to show that, at that time, it had been brought to his notice that his services were being engaged for a specific work which was to last only for a particular period of time. In the absence of such proof/evidence, the respondent had not brought to the notice of the petitioner that the work was short-lived/for a specific period. Since, the services of the petitioner had been terminated in contravention of the provisions of section 25F of the Act, I have no hesitation in holding that the same are illegal and unjustified to which my answer is in “Yes”.

Issue No. 2.

14. It has been alleged by the petitioner that he is unemployed and in his affidavit, Ex. PA, he has supported this fact. It has been held by the *Hon'ble Supreme court in 2010 (1) SLJ SC 70, M/s Ritu Marbals Vs. Prabhakant Shukla* that ***“full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the industry”***.

15. When, the facts of the instant case are considered in the light of judgment (supra), I am of the view that the petitioner is not entitled to be granted back wages, for he period during which, he did not do any work for the respondent. I may also like to mention that in the instant case, the services of the petitioner had stood terminated consequent upon the service of notice Ex. RP-2.

16. Since, his services were terminated in contravention of the provisions of the Act, I am of the view that he is entitled to be reinstated in service with seniority and continuity but without back wages. Accordingly, my answer to this issue is in “Yes”.

Issue No. 3

17. There is no material, whatsoever, on record, which could go to show that as to why the claim of the petitioner is bad for non-joinder of necessary parties. Moreover, at the time of arguments, it could not be explained, on behalf of the respondent, that as to why and in what manner the claim of the petitioner is bad for nonjoinder of the necessary parties. Consequently, my answer to this issue is in “No”.

Issue No. 4.

18. As far as this issue is concerned, no specific evidence has been led by the respondent. Further, when the petitioner had raised an industrial dispute and the conciliation failed, a reference was made to this court by the appropriate government and in pursuance thereof, the petitioner filed a statement of claim. When, such is the position then it cannot be said that he is estopped from filing this claim by his act & conduct. Accordingly, my answer to this issue is in “No”.

Issue No. 5

19. It could not be explained by the respondent as to why this petition suffers from inordinate delay and laches. Their lordships of Hon'ble Supreme Court in (1999) 6 SCC 82, *Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another* have held as under:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

20. Consequently, in view of law laid down by Apex Court, I hold that this petition is not time barred, to which my answer is in “No”.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 25.5.1999. Consequently, the reference stands answered in favour of the petitioner and against respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 15th September 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 59 of 2008
Instituted on 6.11.2008.
Decided on. 15.9.2010.

Joginder Dutt S/o Shri Kishan Dutt R/o Village Karol, P.O Nayagram, Tehsil Kasauli, District Solan, HP.

. .Petitioner.

VS.

1. The Secretary, HP State Electricity Board, Kumar House, Shimla-4.

2. The Senior Executive Engineer, HPSEB Division, Parwanoo, District Solan, HP.

. .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Chandan Goel, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Joginder Dutt S/o Shri Kishan Dutt by the Senior Executive Engineer, HPSEB Division, Parwanoo, District Solan, HP, w.e.f. 9.6.1999, without complying with the provisions of the Industrial Disputes Act, 1947 is legally and justified? If not, what relief of service benefits, amount of compensation, back wages and seniority, the above aggrieved workman is entitled to”?

2. In nutshell the case of the petitioner is that he had joined the services of the respondent Board during the month of November, 1994 and continued to remain as such till 31.12.1997, when his services were terminated without any notice or compensation. In order to challenge his termination, he had filed OA no. 6558/1999 but for want of jurisdiction, the same was withdrawn. It is further averred that his juniors namely Kali Charan & tula Ram are still in service. It has further been explained that whereas Kali Charan had been appointed in the year, 1996, Tula Ram in the year, 1995. Besides, many new hands were provided employment without giving any preference to him. In this way, the respondent Board terminated his services in violation of the provisions of section 25G & H of the Industrial Disputes Act, 1947 (hereinafter referred Act) and for this reason, he deserves to be reinstated with all the consequential benefits including back wages.

3. The petition has been contested on having raised various preliminary objections including maintainability, limitation and bad for delay and latches. On merits, it has been asserted that the petitioner had been engaged as daily wage beldar w.e.f. 26.11.1994 and he worked as such upto 20.10.1995 with frequent interruptions and breaks as he used to remain absent from duties, on his own. After having abandoned the job on 20.10.1995, he again come for work on 26.11.1996 and continued to remain as such in Electrical Sub Division, Parwanoo upto 25.1.1997, when he again abandoned the job. It has been specifically denied that his services had been terminated on 31.12.1997. As far as Kali Charan & Tula Ram, are concerned, their services had been engaged for the reason that they agitated their claims before the Court of law. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 12.1.2010.

1. Whether the termination of services of the petitioner by the respondents w.e.f. 9.6.1999 without complying the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged?

. .OPP.

2. If issue no.1 is proved, to what relief of service benefits, amount of compensation, back wages and seniority, the petitioner is entitled to?

. .OPP.

3. Whether the claim is barred by limitation as alleged?

. .OPR.

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	Decided accordingly in yes.
Issue no.2	Entitled to reinstatement with seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue No. 1.

8. At the very outset, I would like to point out that although, in the reference, which has been made to this Court, the services of the petitioner have been alleged to be terminated w.e.f. 9.6.1999, in contravention of the provisions of the Act, but on the file, it is an admitted fact that his services had been allegedly terminated in the year, 1997. It is to be clarified that whereas the contention of the petitioner is to this effect that his services had been terminated on 31.12.1997, the defence version is to this effect that on 25.1.1997, the petitioner had abandoned the job. I may further like to point out that in the petition, it has not been alleged that the petitioner had completed 240 days in any calendar year including twelve calendar months preceding his termination. Undoubtedly, in the statement of the petitioner (PW-1), it has come that he had completed 240 days in each calendar year but his such version is not in accordance with his case, as set out in the petition. Moreover, the respondents have brought, on record, Ex. RW-1/A, the detail showing the presence/absence of the petitioner as daily wage beldar. Its perusal goes to show that in the year, 1994, he had worked for 16 days, 1995, 184, 1996, 34 and 1997 25 days. Thus, on the record, it has not been established/proved that the petitioner had worked for 240 days in the twelve calendar months preceding his alleged termination.

9. It has been stated by the petitioner (PW-1), that he had continued in service till 31.12.1997, when his services were terminated and that S/Shri Mohan Lal Bhagat Ram etc. who are junior to him are still working in the department. Besides, S/Shri Kali Charan & Tula Ram are also working in the department. He had not abandoned the job. In the cross examination, he admitted that Kali Charan etc. had been engaged upon the award having been made by this Tribunal.

10. According to Shri Sukh Raj Sharma (RW-1), the services of petitioner had been engaged on 26.11.1994 and that he had worked upto 25.1.1997, when he abandoned the job. He has also made it clear that on 20.10.1995, the petitioner had also abandoned the job but on 26.11.1996, his services had again been reengaged. He further made it clear that the services of the petitioner had never been terminated. In the cross examination, he stated that it could be possible that Kali Charan & Tula Ram might be junior to the petitioner.

11. In para no.4 of the petition, it has been specifically alleged by the petitioner that Kali Charan was employed during the year, 1996 and Tula Ram in the year 1995 and that they are still in service. It is not a disputed fact that as far as petitioner is concerned, his services were engaged in the year, 1994. From the statement of Shri Sukh Raj Sharma (RW-1), it is quite clear that the petitioner had been engaged as beldar on 26.11.1994. In reply to para no.4 of the petition, the respondents have asserted that the services of Kali Charan & Tula Ram had been reengaged on the order of Court. This goes to show that the respondents have not denied this fact that said Kali Charan & Tula Ram are junior to the petitioner and that they are still in job. I may also like to point out that Shri Sukh Raj Sharma (RW-1), in his examination-in-chief, has not controverted this fact that said Kali Charan & Tula Ram, are junior to the petitioner. It is to be noted that the respondents have not brought, on file, any such record which could go to show that their services had been reengaged on the orders of Court. This fact cannot be denied that they are junior to the petitioner and that they are in job. Although, the defence version is to this effect that the petitioner had abandoned the job, on his own, but in the statement of Shri Sukh Raj Sharma (RW-1), it has nowhere come that when the petitioner had allegedly left the job, he had been sent any notice/communication to resume the work. It has been held by our own Hon'ble High Court in *latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another*. that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Since, from the pleadings of the parties, coupled with the statement of the petitioner (PW-1), it stands duly proved that juniors to him namely Kali Charan & Tula Ram are still in job, thus, there has been contravention of the provisions of section 25G & H of the Act. It has been held in *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that:

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25G & 25H of the Act.”

Consequently, having regard to the above cited ruling and my discussion, I hold that the termination/disengagement of the services of the petitioner is improper and unjustified for being in violation of the provisions of the section 25G & H of the Act. Accordingly, my answer to this issue is in "Yes".

Issue No. 2.

12. It is to be noted that there is no evidence, whatsoever, on record, brought by the petitioner, which could go to show that after his termination/disengagement, he had remained not gainfully employed. For his failure, to bring evidence to this effect, that after having been disengaged from services, he remained not gainfully employed, I am of the considered view that, he does not deserve to be granted back wages. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that "full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry"***.

13. Since, the petitioner has failed to prove that he had continued to remain in service till 31.12.1997, the version of Shri Sukh Raj Sharma (RW-1) that he had remained in job till 25.1.1997, which version has further been corroborated by Ex. RW-1/A, has to be believed and relied upon. Thus, on the record, it stands duly proved that the petitioner had continued to remain in service till 25.1.1997 and not 31.12.1997 as is his contention. It may be noted that in the reference which has been made to this Court, the services of the petitioner had been allegedly terminated on 9.6.1999 but on the record, it has been proved that he had continued to remain in service till 25.1.1997. I have already held while deciding issue no.1, that the respondents could not prove that on the said date i.e 25.1.1997, he had abandoned his job/service. Since, his (petitioner's) services had been terminated in contravention of the provisions of the Act w.e.f. 25.1.1997, he deserves to be reinstated in service with seniority and continuity but without back wages. Thus, my answer to this issue is in "Yes" accordingly. ***Issue no.3***

14. It could not be explained by the respondents as to why this petition/claim is barred by limitation. Their Lordships of Hon'ble Supreme Court in (1999) 6 SCC 82, ***Ajayab singh Vs. Sirhind Co-operative Marketing – cum processing Service Society Limited and Another*** have held as under:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

Consequently, in view of law laid down by Apex Court, I hold that this petition/claim is not barred by limitation, to which my answer is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his illegal ***termination i.e 25.1.1997***. Consequently, the reference stands answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 15th September, 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

Ref no. 59 of 2010.
Instituted on 1.5.2010.
Decided on. 15.9.2010.

Dharam Singh S/o Shri Ram Krishan, R/o Village Akbarpur, Tehsil & District, Ropar, Punjab. . .Petitioner.

VS.

M/s J.B Industries Village Bhatain, Bharatgarh Road, Nalagarh, District Solan, HP. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: None.
For respondent: Shri Surinder Saklani, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether the termination of services of Shri Dharam Singh S/o Shri Ram Kishan by the management of M/s J.B Industries Village Bhatain, Bharatgarh Road, Nalagarh, District Solan, HP w.e.f. 19.7.2008 without following the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is proper and justified? If not, what relief of service benefits, including seniority and compensation the aggrieved workman is entitled to?”

2. At the very outset, I would like to state that on 15.9.2010, when this reference was fixed for filing of statement of claim by the petitioner, neither he was present in person nor through counsel. Since, on the previous date i.e 4.8.2010, the petitioner was present in person, the absence of the petitioner either in person or through counsel was not found to be justified and accordingly, I proceed with to decide the reference on the basis of material, whatsoever, available on the file. Respondent, on being afforded opportunity to file reply, as per the reference, which has been made to this Court, by the appropriate government, did not file the same on the plea that since, the petitioner has not filed any statement of claim, no reply is to be filed. It is highlighted that the services of the petitioner w.e.f. 19.7.2008, were terminated by the respondent (M/s J.B Industries Village Bhatain, Bharatgarh Road, Nalagarh, District Solan, HP), without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act).

Since, for the failure of the petitioner to have put his presence, before this Court, on the fixed date of hearing i.e 15.9.2010 and also to file statement of claim and further that there is no evidence, whatsoever, on record, which could go to show that his services had been terminated by the respondent w.e.f. 19.7.2008, in contravention of the provisions of the Act, I have been left with no other alternative but to hold that the petitioner has not succeeded in proving that his services had been terminated in contravention of the provisions of the Act. Accordingly, the reference stands answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 15th September, 2010.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

Ref no. 62 of 2010.
Instituted on 1.8.2010.
Decided on. 21.9.2010.

Rajman Singh Negi S/o Shri Ram Charan Dass R/o Village Karaba, P.O Katgaon, Tehsil Nichar, District Kinnaur, HP. .Petitioner.

VS.

The Executive Engineer, Electrical Division, HPSEB, Kaza, District Lahul & Spiti, HP. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: None.
For respondent: Shri Hari Chander Mohan, JE.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether action of the employer i.e. The Executive Engineer, Electrical Division, HPSEB, Kaza, District Lahul & Spiti, HP not to allow Shri Rajman Singh Negi S/o Shri Ram Chandra Dass to resume his duty on 24.7.2000, on being medically fit, as alleged by the workman, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation, the above worker is entitled to from the above employer?”

2. Be it stated, at the very outset, that the petitioner had been duly served for 3.7.2010, the date when the case was fixed, but despite having been served, neither he appeared, in person, nor through counsel. Still having regard to the settled legal position, this court, again ordered that notice be issued to the petitioner so that his claim could be decided on merits, then to dismiss the same in default. I may further make it clear that in order to ensure that the reference, which has been made to this Court, be decided on merits by calling upon the petitioner to file statement of claim and also affording opportunity to respondent to file reply and thereafter, to lead their respective evidence, repeated efforts were made by this Court in order to procure the presence of the petitioner but without success. In these circumstances, this Court was left with no other alternative but to proceed with to decide the reference on the basis of material, whatsoever, available on the file. Respondent, being asked through Shri Hari Chander Mohan, JE, declined to file reply, as per the reference, having been made to this Court, on the plea that since, the petitioner has failed to file statement of claim, no reply was intended to be filed by the respondent.

It is highlighted that the petitioner was not allowed to resume his duties on 27.4.2010, by the Executive Engineer, Electrical Division, HPSEB, Kaza, District Lahul & Spiti, HP, on being medically fit. As per the reference, which has been made to this Court, it is to be ascertained whether the action of the respondent i.e. Executive Engineer, Electrical Division, HPSEB, Kaza, District Lahul & Spiti, HP, is improper and unjustified, if so, to what service benefits, the petitioner is entitled to, including back wages.

For the failure of the petitioner to appear before this court, on having been duly served, and further that there is no evidence, whatsoever, on record, to show that the action of the respondent (XEN), in not allowing the petitioner to resume his duties on 27.4.2000, on being medically fit, was improper and unjustified, I have no hesitation in holding that my answer to this reference has to be against the petitioner. Accordingly, the reference is answered against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 21st September, 2010.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 69 of 2006.
Instituted on 30.5.2006.
Decided on. 15.9.2010.

Som Dutt Sharma S/o Shri Ganga Ram C/o Shri Dharam Dutt Sharma Village Kripalpur, P.O Nalagarh,
District Solan, HP. .Petitioner.

VS.

The Factory Manager M/s Sidhartha Super Spinning Mills Ltd., Nihala Khera, Nalagarh, District Solan, HP.
. Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.R Poswal, Advocate.
For respondent: Shri Rajiv Sharma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the dismissal from service w.e.f. 2.12.2003 of Shri Som Dutt Sharma S/o late Shri Ganga Ram workman by the Management of M/s Sidhartha Super Spinning Mills Ltd., Nihala Khera, Nalagarh, District

Solan, HP w.e.f. 1.12.2003 after conducting domestic enquiry by the management is legal and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to”?

2. Briefly, the case of the petitioner is that he was appointed as Librarian by the respondent company, on 15.6.1984 and worked as such till 2.12.2003, when his services were illegally and wrongly terminated without notice and against the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act). During his service tenure, he had worked with honesty and to the entire satisfaction of his superiors but despite that, on 22.9.2003, he was issued a chargesheet under the certified standing orders, through letter dated 22.9.2003, whereby, he had been asked to explain his position vis-avis the alleged charges. Vide reply/letter dated 25.9.2007, he had denied all the charges but despite that, Shri Sanjeev Sharma, Advocate, who at the relevant time was junior to Shri Rajeev Sharma, Advocate, presently working as consultant with the respondent company, was appointed as an Enquiry Officer in order to enquire into the facts of the case. Although, during enquiry, the petitioner had produced his defence witnesses but the Enquiry Officer recorded the statement of two witnesses. In this way, the enquiry which was being conducted against him, was only an eyewash, just to help the respondent. The refused to record the statement of his witnesses, was denial of the principles of natural justice and fair play. It is further averred that he (petitioner) had raised a voice against the agreement dated 31.2.2003, for which reason, the management had been bent upon to make him scapegoat. Further, there had been a case, registered, under section 406 IPC, against Shri Devinder Jain, MD of the respondent company and for this reason also, the management was maltreating him, on one pretext or the other as he was one of the prosecution witnesses in that case. A false case under section 354 IPC was also got registered against him. He had also made a representation regarding over time, on 13.3.2002, to the respondent management and for this reason, it was envious against him. Since, his services had been terminated without notice and in an illegal manner, without following the mandatory provisions of the Act, he deserves to be reinstated in service with all the consequential service benefits including back wages.

3. The petition has been contested on having raised preliminary objections, including maintainability and that the petitioner has not come before this Court with clean hands. On merits, it has been asserted that the petitioner had continued to remain in the employment of the respondent w.e.f. 15.6.1984 till 2.12.2003, when his services were dismissed, but it has been specifically denied that his services had been dismissed in an illegal and improper manner against the provisions of the Act. In fact, a written complaint had been made against him (petitioner) by one Shri Washisht Pandey, wherein it had been alleged that he had tried to outrage the modesty to his wife while residing in the bachelor quarter of the labour colony. Regarding the incident, he (Washisht Pandey) had also filed a complaint with the Police. On having made an enquiry, in a normal way, the respondent had been constrained to take action against the petitioner and accordingly, he was issued a chargesheet, on 22.9.2003, whereby he had been called to file his reply, which, on having been considered, was not found to be satisfactory. Thus, the respondent decided to hold an independent enquiry against him in order to enquire in to the charges, levelled against him, as per the certified standing orders of the company as well as principles of natural justice. In these circumstances, an independent, out side person, namely Shri Sanjeev Sharma, Advocate was appointed as an Enquiry Officer, who conducted the enquiry as per the certified standing orders and principles of natural justice. The Enquiry Officer had afforded full opportunity to the petitioner to join the enquiry proceedings and to cross examine the witnesses of the respondent management. He was also afforded an opportunity to lead evidence in his defence. Besides, having examined himself in his defence, the petitioner had also examined two witnesses. He had also been afforded opportunity to get his case defended from any person, working in the employment of the respondent. In this way, the enquiry had been conducted in a lawful manner. In his report, the Enquiry Officer had found the petitioner guilty of charges. Upon this, the respondent on having considered all the facts and circumstances, as well as the fact, that there had been unrest among the other workers, nearly seven hundred, residing in the labour colony, and also in the larger interest of the company, took the decision to dismiss his services and accordingly, he was issued 2nd show cause notice-cum-proposed penalty, whereby he had been asked to file the reply. The reply, which had been filed by the petitioner, was again found to be unsatisfactory and thus, on having regard to his misconduct, particularly that he had been indulged in illegal and immoral act, on account of which, women residing in the colony, were feeling terrified, the respondent management decided to dismiss his services and accordingly, the same were dismissed. It has been asserted that Shri Sanjeev Sharma, Advocate was earlier working as junior to Shri Rajeev Sharma, Advocate of the respondent company and that a criminal case under section 406 IPC, had been registered against the MD of the respondent company. After registration of case, the respondent company had paid the whole amount to the department concerned. It has also been asserted that the petitioner has been gainfully employed. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 29.8.2007.

1. Whether the services of the petitioner has been illegally terminated by the respondent without complying with the provisions of the Industrial Disputes Act, 1947? If so, its effect? . . .OPP.

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? . .OPP.
3. Whether the petition in the present form is not maintainable? . .OPR.
4. Whether the petitioner is gainfully employed? If so, its effect? . .OPR.
5. Relief.
6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.
7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 No.
 Issue No.2 Becomes redundant.
 Issue No.3 No.
 Issue No.4 Yes.
 Relief. Reference answered against the petitioner, per operative part of award.

Reasons for findings

Issue No. 1.

8. Learned counsel appearing on behalf of the petitioner has strongly contended that the enquiry, which was got conducted against the petitioner, was not fair because one Shri Sanjeev Sharma, Advocate, who had remained junior to Shri Rajeev Sharma, Advocate for the respondent company, had been appointed as an Enquiry Officer and that he (Enquiry Officer) did not allow the petitioner to examine his witnesses, in defence, total numbering six. In fact, the Enquiry Officer had allowed the petitioner to have examined two witnesses in defence by stating that the statement of the other four witnesses were not relevant/material. His such conduct clearly goes to show that he was bent upon to help the respondent management and that the enquiry, which had been conducted against the petitioner, was only an eyewash. Ld. Counsel further urged that the petitioner had been made a scapegoat as he raised a voice against the agreement dated 29.3.2003 and was also a prosecution witness against Shri Devinder Kumar, MD of the respondent company against whom, a case under section 406 IPC, had been registered. Thus, in order to settle score with the petitioner, the respondent management had got filed a case, under section 354 IPC, against him (petitioner), in which, he was acquitted by the Ld. Court of SDJM, Nalagarh. Ld. Counsel further urged that the respondent management had also been enmical towards the petitioner for the reason that he had made a representation to the President of respondent company, regarding over time, on 13.9.2003. Another limb of the contention of the Ld, Counsel has been to this effect that since, Smt. Sarita pandey, was not a worker in the respondent company, domestic enquiry, on her alleged complaint, that the petitioner had tried to outrage her modesty, could not have been conducted. Moreover, when, a criminal case had been got lodged against the petitioner and that he was made to face a trial, on the basis of that complaint, the domestic enquiry could not have been initiated against him. The acquittal of the petitioner, in the criminal case, clearly goes to show that the allegations against him, regarding allegedly trying to outrage the modesty of Smt. Sarita Pandey, were totally false and for this reason, the domestic enquiry, which had been got conducted on the same allegations, was also required to be decided in favour of the petitioner than to have held him guilty and terminating his services.

9. On the other hand, Id. Counsel appearing on behalf of the respondent, has urged with vehemence that enquiry had been got conducted against the petitioner in just and fair manner by following the principles of natural justice and that since, he had been found to have committed an immoral act, by trying to outrage the modesty of the wife of a worker, working in the respondent company, his services were rightly dismissed by serving upon him a 2nd show cause notice. Ld. Counsel further submitted that Shri Sanjeev Sharma, Advocate had conducted the enquiry by following a legal procedure, whereby, an opportunity had been afforded to the petitioner for getting appointed a defence assistant and further, to enable him to cross examine the witnesses of the management. The petitioner had also been afforded an opportunity to lead evidence in his defence and that the statement of two witnesses were recorded. Further, when the Enquiry Officer, submitted his report to the respondent management, the copy of the same was made available to the petitioner and his reply was called for. Considering his reply, the management issued 2nd show cause notice upon the petitioner regarding the penalty, proposed to be inflicted upon him. Thus, every principle of natural justice had been followed/complied with while conducting the domestic enquiry and also till, the penalty, as per law, was imposed upon him. The petitioner has failed to prove that any bias was shown, by the Enquiry Officer, against him and that during enquiry proceeding, a fair hearing was not given to him, the Ld. Counsel submitted.

10. It is not a disputed fact that a chargesheet had been served upon the petitioner and that when the reply/written statement of the petitioner was not found to be satisfactory, the respondent management ordered to hold a domestic enquiry against him, in order to enquire into the charges levelled against him. It is also not a disputed fact that Shri Sanjeev Sharma, Advocate had been appointed as an Enquiry Officer. On the record, the respondent company has brought the copy of enquiry proceedings, Ex. R-1. Its perusal goes to show that one Shri Ram Singh Pathaniya, had been appointed to represent the respondent management before the Enquiry Officer and that, the petitioner, by filing a letter, had sought the services/assistance of Shri Hridaya Ram S/o Shri Ramnath, Clerk, Quality Control Department of the respondent company, as defence assistant, in order to defend his case in the enquiry proceedings. Thus, it is quite apparent, on the record, that the petitioner had been made available the services of defence assistant, as named above, for defending his case in the enquiry proceedings.

11. In the statement of Shri Devinder Sharma (RW-IV), it has come that Shri Sanjeev Sharma, Enquiry Officer, is working with Shri Rajeev Sharma, Advocate. From the statement of this witness, it is highlighted that Shri Sanjeev Sharma, Advocate, who was appointed as an Enquiry Officer, in order to conduct enquiry proceedings against the petitioner, has been working with Shri Rajeev Sharma, Advocate but on that score, it cannot be said that he (Enquiry Officer) was biased against the petitioner, in any manner. What is required to be seen by this Court is that if, the enquiry Officer had conducted the enquiry in fair and proper manner by following the principles of natural justice or not. In order to ascertain this fact, the Court has to see as to whether, the petitioner had been afforded opportunity to be represented by a defence assistant, of his choice, and further that the Enquiry Officer had afforded him opportunity to cross examine the management witnesses besides giving him opportunity to lead evidence in support of his defence.

12. Now, when regard is given to the statement of the petitioner (PW-1), it is revealed that nowhere he has stated that Shri Sanjeev Sharma, who had been appointed as an Enquiry Officer, was biased against him for the reason that, at the relevant time, he was the junior of Shri Rajeev Sharma, Advocate Standing Counsel/Advisor of the respondent company. He has also not stated that during enquiry proceedings, he was not afforded proper opportunity to cross examine the witnesses of the respondent management and further that the enquiry Officer did not allow him to examine all the witnesses, to whom he wanted to examine. At this stage, I would like to point out that during arguments, it has been urged by the Counsel for the petitioner that Enquiry Officer had only allowed the petitioner to examine two witnesses in his defence whereas, he wanted to examine six witnesses but when regard is given to the statement of the petitioner (PW-1), nothing such comes on record. Moreover, the statement of the petitioner (PW-1), is also silent in order to show that who were the four witnesses to whom he also wanted to examine but the Enquiry Officer, did not allow him to examine them. When regard is given to his cross examination, it is highlighted that he admits this fact that on the complaint of Shri Washisht Pandey, his neighbor, residing in the labour colony, he had been charge-sheeted by the respondent management and that the copy of the chargesheet which had been received by him, is Ex. RA, to which he filed reply vide Ex. RB. Since, in the reply, he had denied the charges, the respondent management had decided to initiate a domestic enquiry against him and Shri Sanjeev Sharma, Advocate, was appointed as an Enquiry Officer, as per letter Ex. RC and that on the receipt of notice Ex. RD, he (PW-1) had joined the enquiry and also examined the witnesses. The Enquiry Officer had also been providing him the copies of the statement of the witnesses alongwith the copies of zimini orders on the dates of hearing. In his defence, he had also produced the witnesses and that after the completion of the enquiry, the enquiry report was given to him by the Enquiry Officer and that he had also received a notice from the respondent management regarding proposed penalty, vide Ex. RD, to which his reply is Ex. RF. He denied to have refused to accept the dismissal letter, mark B, alongwith his dues.

13. Shri Sanjeev Sharma, Advocate (RW-1), has appeared in the witness box to state that he had been appointed as an Enquiry Officer by the respondent vide Ex. R/C in order to conduct enquiry against the petitioner and that on 27.10.2003, he had started the enquiry, on having sent a notice to the petitioner, vide Ex. R/D. To both the parties, he had disclosed the procedure to be followed by him while conducting the enquiry and that the copies of zimini orders were being supplied to the petitioner vide Ex. R/1. Vide letter Ex. R/2, the petitioner had requested for providing defence assistant which was allowed and in consequence thereof, Shri Hriday Ram was appointed as defence assistant. The management had examined four witnesses, the statements of whom are Ex. R/3 to Ex. R/6 and then the statement of the petitioner was recorded, which is Ex. R/7. The petitioner had also led his evidence, by examining two witnesses, the statement of whom are Ex. R/8 and Ex. R/9. Thereafter, on having heard both the parties, he submitted his enquiry report, the copy of which is Ex. R/10, to the management, which supplied its copy to the petitioner through Ex. R/E. In the enquiry, he had found the petitioner guilty of the charges, framed against him. In the cross examination, he denied that he was the junior of Shri Rajeev Sharma, Advocate.

14. From the statement of Shri Sanjeev Kumar (RW-1), it is abundantly clear that while conducting enquiry, against the petitioner, he had followed the principles of natural justice by getting appointed a defence assistant to the petitioner and affording him opportunity to cross examine the witnesses of the management besides giving an opportunity to lead his evidence, in defence. I may like to point out that no such suggestion has been given to this witness (RW-1), that he had not allowed the petitioner to have examined all his witnesses which he, in fact, wanted to examine and that he only allowed him (petitioner), to examine two witnesses.

15. The petitioner (PW-1), in his cross examination, has admitted that he had been afforded opportunity to cross examine the management witnesses and to lead evidence, on other material facts, he also admits the case of the respondent. From the statement of Shri Sanjeev Sharma (RW-1), it is duly proved that before conducting the enquiry proceedings, he had made known to the parties regarding the procedure to be followed by him and that while conducting the enquiry, he had followed all the relevant principles of natural justice. In these circumstances, I am not inclined to accept the contention of the Ld. Counsel for the petitioner that the enquiry had not been conducted in fair and proper manner by following the principles of natural justice.

16. From the statement of Shri Sanjeev Sharma (RW-1), it is further abundantly clear that he had submitted the enquiry report Ex. R/10, to the management and that its copy had been sent to the petitioner through Ex. RE. It has been stated by Shri Devinder Kumar Saxena (RW-IV) that vide enquiry report, Ex. R/10, the petitioner had been found guilty and that 2nd show cause notice was served upon him vide Ex. RE, to which, he had filed a reply and thereafter, he was served with a dismissal letter Ex. RW-IV/A alongwith cheque of Rs. 7,487/-, the photocopy of which is Ex. RW-IV/B. The letter/cheque had been refused by the petitioner. Thereafter, the same had been again sent to him by registered post vide Ex. RW-IV/C, which was also refused by him.

17. It is abundantly clear from the statement of Shri Devinder Kumar Saxena (RW-IV) that the copy of the enquiry report was made available to the petitioner and that before dismissing his services, he had also been issued 2nd show cause notice and only thereafter, he was dismissed from service. ***It has been held by Hon'ble Supreme Court in 2010 LLR 348, Sarv. UP, Gramin Bank Vs. Manoj Kumar Sinah*** that:

"Non furnishing of enquiry report will not vitiate the punishment when the delinquent employee failed to state that any prejudice has been caused for want of supply of enquiry report."

18. In the instant case, it stands duly proved, on record, that the enquiry report had been made available to the petitioner and that he had also been served with 2nd show cause notice in respect of the proposed penalty to be imposed upon him. Thus, there is no evidence, whatsoever, on record, which could go to show that any prejudice had been caused to the petitioner either, from the appointment of Shri Sanjeev Sharma (RW-1), as an Enquiry Officer or on account of the procedure followed by him while conducting the enquiry. I may also like to point out that during the enquiry proceedings, the petitioner had not filed any such application for getting changed the enquiry Officer for the reason that he had no faith in him, as he was junior to Shri Rajeev Sharma, Advocate of the respondent company.

19. From the statement of Shri Washisht Pandey (RW-2), it is abundantly clear that since 1987, he has been working with the respondent company and used to live in Sidhartha colony alongwith wife Smt. Sarita Pandey and that the petitioner was his neighbor in the said colony. On, 17.9.2002, he had been told by Smt. Kalawati that his wife (Sarita Pandey) had been dragged by the petitioner inside his room and that when he went to the spot, he saw his wife coming out from the house of the petitioner while weeping and disclosed that he (petitioner) tried to outrage her modesty. When he asked to the petitioner regarding the incident, he threatened him to go away or that he (petitioner) would give him (RW-2) blow with an axe. Thereafter, he filed a written complaint vide Ex. RF to the respondent company upon which an enquiry had been got conducted and his statement was also recorded by the Enquiry Officer. ***His wife has died.*** In the cross examination, he denied that his wife has made a statement in the Court of Ld. JMIC, Nalagarh that nothing had happened to her.

20. The statement of Shri Washisht Pandey (RW-2) that the petitioner had tried to outrage the modesty of her wife Smt. Sarita Pandey (since dead) has been supported by Smt. Lachmina (RW-3). It is true that the petitioner has brought, on record, the copy of the judgment passed by Ld. JMIC, Nalagarh dated 25.8.2007, Ex. PA, in order to show that he (petitioner) has been acquitted of the charge under section 354 IPC but on this score, it cannot be held that the domestic enquiry, which was conducted against him, was not fair and justified. ***It has been held by Hon'ble Allahabad High Court in 2007, LLR 618, UP State Road Transport Corporation Vs. Harish Chandra and another*** that:

"Finding of Labour Court that since the workman was acquitted in criminal proceedings. He was liable to be exonerated in domestic enquiry proceedings. And directed reinstatement. Approach of Labour Court is erroneous. Award passed by Labour Court is manifestly erroneous in law and cannot be sustained. Quashed. Standard of proof in departmental proceedings and in criminal proceedings are entirely deferent. Acquittal in criminal case cannot be made a sole ground for reinstatement."

Hon'ble Calcutta High Court in 2007 LLR 888 has held that:

"Departmental proceedings- vis-à-vis criminal trial-The facts pertained to same allegations as pending. In departmental proceedings, delinquent was given adequate opportunity to defend his case. He was allowed to inspect the documents. Departmental proceedings can continue simultaneously with criminal case. More so

when there was no question of serious prejudice being caused to employee. His plea only that he was acquitted in criminal case. Cannot be a ground for stay of disciplinary proceedings."

Hon'ble Supreme Court in 2008 LLR 432, Employees Management West Bokaro Colliery of TISCO Ltd. Vs. Concerned workman, Ram Pravesh Singh, has held that:

"Once the enquiry officer, (a Domestic Tribunal) as based on evidence comes to a particular conclusion. Normally it is not open to the courts to substitute their subjective opinion in the place of the one arrived at by the domestic Tribunal. In the absence of the challenge to the legality or fairness of the domestic enquiry, the court should be reluctant to either interfere with the findings recorded by the Enquiry Officer or the punishment awarded by the punishing authority more so when the advocate of the workman has stated that he does not want to challenge the fairness of the enquiry. Hence the dismissal of the workman is restored."

"Well settled that yard-stick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubts, the standard of proof in a departmental proceeding is preponderance of probabilities."

21. In view of case law, supra, the acquittal of the petitioner in a criminal case cannot be made a ground for his reinstatement particularly when in the domestic enquiry charges against him stood proved and accordingly penalty was imposed upon him. Consequently, for my above discussion, I hold that the services of the petitioner had been terminated by the respondent management on the basis of domestic enquiry which had been got conducted by Shri Sanjeev Sharma, in a fair and proper manner by following the principles of natural justice and keeping in view the interest of the workers of the respondent company, the respondent management, rightly imposed the penalty upon him by dismissing his services. Consequently, The petitioner, upon whom, the onus to prove this issue lies, fails to prove it and my answer to this issue is in "No".

Issue No.2.

22. In view of my findings on issue no.1 above, this issue becomes redundant.

Issue No.3

23. It is not understandable as to why the petition, in the present form, is not maintainable, particularly, when it has been filed in pursuance to the reference, made to this Court, by the Labour Commissioner. Apart from it, the learned counsel for the respondent could not explain as to why this claim/petition, in the present form, is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in "No".

Issue No.4

24. When regard is given to the facts narrated in the petition, it is revealed that, nowhere, it has been stated by the petitioner that he is not gainfully employed. Further while appearing in the witness box, it has not been stated by the petitioner (PW-1) that after his termination, he is not gainfully employed. Undoubtedly, the onus to prove this issue is upon the respondent but since, the petitioner has not led any evidence, in order to show that he is not gainfully employed, the respondent also did not lead evidence in support of this issue. Since, initial onus was upon the petitioner to have proved that he is not gainfully employed, even for want of evidence, led by the respondent, it is held that the respondent proves this issue to which my answer is in "Yes".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 15th September, 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA

Ref no. 80 of 2007.
Instituted on 30.8.2007.
Decided on.7.9.2010.

Roshan Lal S/o Shri Budhi Singh R/o Village Labrog, P.O Tharoach, Tehsil Chopal, District Shimla, HP.

. Petitioner.

VS.

The Divisional Manager, HP State Forest Corporation Ltd., Forest Working Division, Chopal, District Shimla, HP. . Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Parkash Chand, Advocate.

For respondent : Shri Peeyush Verma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Shri Roshan Lal S/o Shri Budhhi Singh workman by the Divisional Manager, HP State Forest Corporation Ltd., Forest Working Division, Chopal, District Shimla, HP w.e.f. 15.5.1997 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper & justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. Briefly, the case of the petitioner is that he had joined as daily paid chowkidar in the month of August, 1985 with the respondent in Nerwa Division, District Shimla, HP and continued as such till 15.5.1997 when his services were, all of sudden, terminated vide letter dated 15.5.1997, without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act). As far as said Nerwa Division is concerned, on an average, more than hundred workers were being engaged, per day, continuously for many years, where the work of converting the standing forest trees into logs was going on and then those were transported to the road side depot. either through manual labour or through rivers/khaddis. To the best of his ability, he had performed his duties without any complaint from any quarter. On having felt aggrieved by the said termination order, dated 15.5.1997, he had filed an OA before the State Administrative Tribunal, which was withdrawn on the point of jurisdiction. As far as nature of work available with the respondent is concerned, it is of continuous nature. It is further averred that when his services were terminated, a notice under section 25F had been issued to him and that in lieu of one month's notice, he had been given wages for one month and some additional amount, allegedly, as compensation, was also given to him. However, the calculation of said compensation was not correct. It has further been averred that since other workmen, who had been retrenched, were also pursuing their cases, for this reason, he bonafide believed that their decision will also be applicable to him and for this reason, he raised the Industrial Dispute at a later stage. In reference nos. 23/1995, 44/1995, 43/1995, 46/1995, 4/1997 and 30/1996, this Court had passed awards in favour of the similar situated chowkidars, who had also been disengaged alongwith the petitioner, from the Chopal Division, by ordering their reinstatement. Since, he (petitioner) is also similarly situated and that identical notices had been given to the workmen, in the aforesaid reference petitions, he is entitled to be given the similar treatment. Against the aforesaid backdrop, a prayer has been made for his reinstatement alongwith all the service benefits including back wages.

3. The petition has been contested on having raised various preliminary objections including maintainability, estoppel and jurisdiction. On merits, it has been stated that the services of the petitioner had been retrenched due to the non availability of work after having followed the due process of law. In fact, on account of non availability of sufficient work, the services of various workmen had to be retrenched by following the process of law. It is further maintained that as per the retrenchment order, the petitioner had been duly made aware of the grounds for which his services were being retrenched. It has been denied that a regular work is available with the respondent corporation. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues, which were struck on 17.3.2010.

1. Whether the termination of the services of Shri Roshan Lal petitioner by the Divisional Manager, HP State Forest Corporation Ltd., Forest Working Division, Chopal, w.e.f. 15.5.1997 without complying the provisions of Industrial disputes Act, 1947 is improper and unjustified as alleged? . .OPP.
2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? . .OPP.
3. Whether the petitioner has no locus standi to file and maintain the claim petition? . .OPP.

- | | | |
|----|--|---------|
| 4. | Whether the claim petition is not maintainable in the present forum? | . .OPP. |
| 5. | Whether the claim petition is time barred? | . .OPR. |
| 6. | Whether the claim petition is barred by the principle of resjudicata as alleged? | . .OPR. |
| 7. | Relief. | |

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

- | | |
|-------------|--|
| Issue no.1 | Yes. |
| Issue no.2 | Entitled to reinstatement in service with seniority and continuity but without back wages. |
| Issue no.3 | No. |
| Issue no.4 | No. |
| Issue no.5 | No. |
| Issue no.6. | No. |
- Relief. Reference answered in favour of the petitioner and against respondent, per operative part of award.

Reasons for findings

Issue No.1

8. Ld. Counsel for the petitioner has urged that in the earlier reference petitions as per their mention given in para 10 of the petition, similarly situated workmen had been ordered to be reengaged by this Court whose services had also been retrenched/terminated by issuing notices under section 25F of the Act. He further urged that since, the work is available with the respondent corporation, the termination of the petitioner also deserves to be held in contravention of the provisions of the Act. Ld. Counsel further urged that from the material on record, it has also been proved that juniors to the petitioner have been retained in service and for this reason, he also deserves to be reinstated alongwith all the consequential service benefits.

9. On the contrary, it has been submitted on behalf of the respondent that since there was no sufficient work available with the respondent corporation, the services of many workmen had to be retrenched, alongwith the petitioner, by following the provisions of the Act. Ld. Counsel further urged that from the evidence on record, it stands duly proved that before terminating the services of the petitioner, he had been paid retrenchment compensation besides one month's salary in lieu of notice. Ld. Counsel further contended that the petitioner has also failed to prove that his juniors are in service and that there had been contravention of the provisions of section 25G & H of the Act.

10. The reference which has been made to this Court is to this effect, whether the services of the petitioner had been terminated w.e.f. 15.5.1997 without complying with the provisions of the Act or not. Even, from the facts narrated in the petition, it is abundantly clear that before terminating his services, the petitioner had been given notice whereby he had been paid salary and retrenchment compensation. It is true that the petitioner has also alleged that the compensation, which had been paid to him was not calculated correctly but when regard is given to the facts narrated in the petition, it is revealed that he has nowhere stated as to what retrenchment compensation was required to be paid to him.

11. While appearing in the witness box, the petitioner (PW-1) has supported all the material facts, on oath, including that he had worked as chowkidar on daily wages with the respondent from August, 1985 till May, 1997, when his services were terminated without following the provisions of section 25N of the Act and that there were 135 workers working under Nerwa Division at that time. Before terminating his services, he had been served with one month's notice under section 25F. S/Shri Bhadur Singh, Padam Bhadur and Prem Bhadur who are junior to him, are still working, as per court orders. Despite having worked for twelve years, his services were illegally retrenched and that in each calendar year, he had completed 240 days including the year preceding his termination. The work against which he had been engaged is still available with the respondent. In the cross examination, he admitted that notice Ex. RP-1 had been issued to him and that Ex. RP-2 is the seniority list of daily rated workers, maintained by the respondent. He denied of not having completed 240 days in twelve calendar months preceding his termination. The aforesaid persons had been retained by the respondent on the court order.

12. According to Shri Ramesh Chand (RW-1), the petitioner had remained engaged as daily wage chowkidar w.e.f. 1.11.1990 to 15.5.1997. For paucity of work, the petitioner had been issued notice dated 15.5.1997, Ex. RW-1/B as per section 25F of the Act and that as per this notice, he had also been paid salary in lieu of one month's notice. The corporation has seasonal work regarding conversion of the trees and that every year, the same is

getting reduced. For this reason, many other daily wagers had also to be retrenched. On having received the salary/compensation, the petitioner had never complained to the corporation regarding the same. Seniority list is Ex. RW-1/C. In the cross examination, he admitted that in the Nerwa Division, more than hundred workmen had been terminated in the year, 1993 and that the petitioner had completed 240 days in a calendar year. The workers, who had filed their cases titled as Ram Nand & others Vs. State Forest Corporation Nerwa/Chopal have been reinstated in job.

13. It has been specifically stated by Shri Ramesh Chand (RW-1) that the petitioner had been issued a notice under section 25F of the Act, copy of which is Ex. RW-1/B. The perusal of this notice goes to show that the services of the petitioner had to be terminated on account of reduction in the work of timber extraction and for this reason his services had become surplus. This document further goes to show that he had been paid one month's salary, in lieu of one month's notice, amounting to Rs. 3487/- and also retrenchment compensation of Rs. 1372/-.

14. From the evidence, on record, there remain no doubt regarding this fact that before his termination, the petitioner had completed 240 days in the twelve calendar months preceding his termination and that his services had been terminated by following the provisions of section 25F of the Act. At this stage, I may mention that, in the statement of the petitioner (PW-1), it has come that his services had been terminated without following the provisions of section 25N of the Act. In the petition, it has been specifically alleged that the petitioner is also entitled to the protection granted under section 25N of the Act. Here, I would like to point out that as per the case of the petitioner, in Nerwa Division of respondent corporation, on an average, more than hundred workers were being engaged, per day, continuously for many years. It has been specifically stated by the petitioner that there had been 135 workers, working under Nerwa Division. The respondent has brought, on record, the seniority list Ex. RW-1/C, which also goes to show that it pertains to 255 daily wage chowkidars of Nerwa Division. In these circumstances, when it is quite evident, on record, that at the relevant time, there had been more than hundred workmen whose services were engaged by the respondent corporation, provisions of section 25N of the Act had become applicable as per which the petitioner was required to be issued three month's notice in writing indicating the reason for his retrenchment and in lieu of such notice wages for the period of notice. It is true that, on the record, it has been proved that the salary in lieu of notice and retrenchment compensation had been paid to the petitioner as per section 25F of the Act vide Ex. RW-1/B but since, the respondent had not issued notice to the petitioner as required under section 25N of the Act, I have no hesitation in holding that his services had been terminated in contravention of the provisions of the Act, particularly section 25N. ***In case titled Uttranchal Forests Development Corporation & Anr. Vs. Jabar Singh & others, 2007-II-LLJ 95***, it has been held by the Hon'ble Apex Court that:

“Retrenchment notice in question not complying with two conditions of section 25N namely giving three months notice to workman in writing or wages in lieu thereof and taking prior permission of government-Workman, therefore entitled to reinstatement with full back wages”.

In the instant case, the respondent has not complied with the conditions as mentioned under section 25N of the Act. For the failure of the respondent to have complied with the provisions of section 25N of the Act, the termination/retrenchment of the petitioner from service w.e.f 15.5.1997, is held to be illegal and improper.

15. In the statement of the petitioner (PW-1), it has also come that persons junior to him have been retained in service whose names are S/Shri Bhadur Singh, Padam Bhadur and Prem Bhadur. However, when his such version is considered on the face of seniority list Ex. RW-1/C, it is revealed that the above named persons are not junior to him. In this way, there is no specific and convincing evidence, on record, which could go to prove that the respondent had retained the services of junior persons by terminating the services of the petitioner.

16. Consequently, for my above discussion, I hold that the services of the petitioner w.e.f. 15.5.1997, were illegally terminated by the respondent in contravention of the provisions of section 25N of the Act. Accordingly, my answer to this issue is in “Yes”.

Issue No.2

17. It has not been alleged by the petitioner that he is unemployed. In order to claim back wages, it was incumbent upon him to have proved this fact that after his termination, he has not been gainfully employed. For want of oral as well as documentary evidence, he has failed to prove this fact. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that ***“full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”***. In view of the law laid down by the Hon'ble Apex Court, I am of the view that the petitioner is not entitled to back wages.

18. It is to be noted that although, the petitioner has taken this plea that after his retrenchment, he had filed an OA before the Administrative Tribunal but on the record, he has not brought any such document which could go to prove his such contention. Moreover, while appearing in the witness box as PW-1, the petitioner has also not stated that

earlier, he had filed an application before the State Administrative Tribunal against his retrenchment. It is writ large on the file that the petitioner has raised an industrial Dispute after a considerable time from the date, when his services were retrenched. The reference which had been made to this Court is dated 28.8.2007. Since, the petitioner had failed to raise the demand notice, at the earliest, I am of the view that he should be reinstated in service by granting seniority from the date of reference i.e. w.e.f. 28.8.2007 and not from the date when his services were terminated i.e 15.5.1997. Thus, my answer to this issue is in "Yes" accordingly.

Issue No.3.

19. Definitely, the petitioner has locus standi to file the claim petition, which has been filed in pursuance to the reference, having been made to this Court. Thus, without hesitation, I hold that the respondent has failed to prove this issue to which my answer is in "No".

Issue No.4.

20. It is not understandable as to why this petition is not maintainable, particularly, when it has been filed in pursuance to the reference having been made to this Court by the Labour Commissioner. Apart from it, the learned Counsel for respondent could not explain as to why this petition is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in "No".

Issue No.5

21. It could not be explained by the respondents as to why this petition suffers from inordinate delay and latches. Their lordships of Hon'ble Supreme Court in (1999) 6 SCC 82, *Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another* have held as under:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

22. Consequently, in view of law laid down by Apex Court, I hold that this petition is not time barred, to which my answer is in "No".

Issue No.6

23. In support of this issue, no evidence, whatsoever, has been led by the respondent in order to prove that the claim petition is barred by the principle of resjudicata. Even, this fact had not been agitated during the course of arguments. Thus, by holding it, to be not barred by the principle of resjudicata, my answer to this issue is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, ***from the date of reference i.e 28.8.2007***. Consequently, the reference stands answered in favour of the petitioner and against respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 7th September 2010 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
SHIMLA CAMP AT SOLAN

Ref no. 82 of 2007.
Instituted on 1.9.2007.
Decided on. 9.9.2010.

Rakesh Kumar Sharma S/o Shri Ishwar nand R/o Village Baryari, P.O Delagi, Tehsil & District Solan, HP.

. .Petitioner.

VS.

1. **The Director Technical Education, Directorate of Technical Education, Vocational and Industrial Training, Sunder Nagar, District Mandi, HP.**

2. **The Principal Industrial Training Institute, Solan, District Solan, HP.**

3. The Secretary, HP Public Service Commission, Shimla-171002.

4. Munni Lal presently Instructor in the Trade of Upholstery, Industrial Training Institute, Solan, HP.

. .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Jagdish Kanwar, Ld. Dy. DA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Shri Rakesh Kumar Sharma S/o Shri Ishwara Nand, Instructor by the (1) Director Technical Education, Directorate of Technical Education, Vocational and Industrial Training, Sunder Nagar, District Mandi, HP (2) Principal Industrial Training Institute, Solan, District Solan, HP without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, Shri Rakesh Kumar Sharma S/o Shri Ishwara Nand, Instructor is entitled to”?

2. Before, I –proceed further, it is worthwhile to point out that although, the statement of claim, which has been filed before this Court by the petitioner, is against four respondents including Secy. HP Public Service Commission, Shimla-171002 (hereinafter referred as respondent no.3) and Shri Munni Lal, presently instructor (hereinafter referred as respondent no.4) but as per order dated 20.10.2009, of this Court it was held that since, respondent no.3 (HPPSC) and respondent no.4 (Muni Lal) have not been made parties in the reference, hence, this court cannot go beyond the reference and as such respondent no.3 and 4 cannot be summoned. The said order dated 20.10.2009, is reproduced as under:

20.10.2009.

Present: Shri J.C Bhardwaj, Ld. AR for the petitioner.

Shri Jagdish Kanwar, Ld. DDA for respondent.

One PW examined. Statement of petitioner closed. At this stage, Shri Jagdish Kanwar, LD. DDA has submitted that no notice appears to have been given to the Secretary, HP Public Service Commission, Shimla and Shri Munni Lal, Instructor, ITI Solan i.e respondent No. 3 & 4 as mentioned in the claim petition. On the other hand, Ld. AR Shri J.C Bhardwaj, has readily and fairly conceded that this court cannot go beyond this reference.

Heard. Since, HP PSC, Shimla and Shri Munni Lal have not been made parties in the reference, hence this court cannot go beyond this reference and as such respondent no.3 & 4 cannot be summoned. Now, to come up for respondent's evidence on 21.12.2009 on taking steps”.

From the order, as aforesaid, it is abundantly clear that although the names of respondent no.3 & 4 have been continued to be mentioned in the pleadings, before this Court, but they were not summoned and as such, this award will only pertain to the petitioner and Director Technical Education, Directorate of Technical Education, Vocational and Industrial Training, Sunder Nagar, District Mandi, HP (hereinafter referred as respondent no.1), and Principal Industrial Training Institute, Solan, District Solan, HP (hereinafter referred as respondent no.2).

3. Briefly, stated facts of the case are as under:

4. Since, the petitioner had got his name registered with the employment exchange, Solan and that there was one vacant post of upholstery Instructor, at ITI Solan (hereinafter referred as post of Instructor/Instructor), he was called for interview vide letter dated 23.11.1996 for the reason that he had fulfilled the required experience and qualification and that in consequence thereof, he was selected as Instructor on 11.12.1996 on consolidated monthly salary of Rs. 3,000/- . His appointment, as such, was made applicable w.e.f. 16.12.1996. It is averred that as per the

judgment, passed by State Administrative Tribunal, vide OA no. 871/1998, he was held to be a workman as per definition under section 2(s) of the Industrial disputes Act, 1947 (hereinafter referred as Act). Even, his appointment letter which was issued to him, at the first instance, on 11.12.1996, was for the designated post of Upholstery Instructor which carried the meaning of technical work for all purposes. Despite the fact that he had been discharging his duties with utmost sincerity and devotion, his services were suddenly terminated on 22.9.1997, without any cogent reason and justification. During his service tenure, he had also completed 240 days preceding his termination. Since, he had not received any intimation from the respondents, regarding selection of someone on the said post, he was under a bonafide impression that no regular employment was to be made to this post. However, on 22.9.1997, another person, namely Munni Lal, was appointed as regular Instructor instead of regularizing his service. In fact, said Munni Lal had been employed against the prescribed norms under section 25G & H of the Act because the petitioner had bonafide lien upon the post of Instructor due to his working experience. Even, he was neither called for interview nor his name was considered for appointment, on the said post, besides taking into account his lien and experience. As far as aforesaid OA no. 871/1998, is concerned, the same was decided on 11.3.2005 with the observation that the Administrative Tribunal had no jurisdiction to entertain the matter and to deal with the same and that the petitioner could enforce his right under the Act. Against the aforesaid backdrop, a prayer has been made to quash and set aside the entire selection process conducted by respondent no.3 in selecting respondent no.4 to the post of Instructor, to declare null and void and inoperative, the termination order dated 22.9.1997 and further to direct respondent no 1 to 3 to hold fresh selection/interview and that further the petitioner be reinstated in service from the date of his illegal termination i.e 22.9.1997 with all the consequential service benefits including back wages.

5. The petition has been contested by respondent no.1 & 2, on having raised preliminary objections, including maintainability. On merits, it has been asserted that the petitioner was engaged as Instructor on contractual basis for 89 days, in the first instance, as per terms and conditions specified in the order dated 11.12.1996 and that he continued as such till 22.9.1997 with artificial breaks between every 89 days, keeping in view the requirement of the respondent department. As per terms and conditions nos. 1 to 3 of the aforesaid letter dated 11.12.1996, the engagement of the petitioner, on the said post, was ceased to be effected, on the joining of regular incumbent and that he was only required to report for duties in case, the aforesaid conditions were acceptable to him and further after entering into an agreement. The aforesaid terms and conditions had been duly accepted by him, by executing an affidavit, before joining as an Instructor. Since, he had accepted the terms and conditions by executing an affidavit, his engagement automatically ceased to be effected on the joining of regular incumbent on the basis of proper selection procedure. It is further maintained that the Administrative Tribunal had already allowed the replacement of the services of the adhoc appointees with the regular incumbents/appointees vide interim order dated 1.12.1988, on the principles of first come last go, in MA no 448/1988 in OA no. 254 of 1988. Further, since the post of Instructor, for regular appointment, was in the preview of respondent no.3, the name of respondent no.4 was recommended after following proper selection procedure. In this way, on the joining of the regular incumbent (respondent no.4), the contractual engagement of the petitioner automatically ceased w.e.f. 22.9.1997 (afternoon), as per the terms and conditions laid down in the contractual engagement office order dated 11.12.1996, Thus, action taken by the answering respondents, is legal and fair. Other allegations denied.

6. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

7. Pleadings of the parties gave rise to the following issues which were struck on 11.12.2008.

1. Whether the termination of services of petitioner by the respondents without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is improper and unjustified as alleged? . .OPP.

2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? . .OPP.

3. Whether the petition is not maintainable? . .OPR.

4. Relief.

8. I have heard the learned AR for the petitioner and Ld. Dy. DA for the respondents and have also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Relief. Reference answered against the petitioner, per operative part of award.

Reasons for findings

Issue No.1

10. Ld. AR for the petitioner has submitted with vehemence that, since the petitioner had completed 240 days in the preceding twelve calendar months from the date of his termination, the respondents were required to comply with the provisions of section 25F of the Act by issuing one month's notice to the petitioner stating therein the grounds for his termination and in lieu thereof to pay him salary, besides, retrenchment compensation. Since, the respondents have failed to comply with the requirements of section 25F of the Act, the termination of the petitioner is illegal and unjustified. Ld. AR further contended that since, the petitioner had lien on the post and that during his service tenure, his work was found to be not unsatisfactory, his name was required to be considered while making selection on regular basis and that he also deserves to be given preference in selection process.

11. On the other hand, it has been argued by Ld. Dy. DA, appearing on behalf of the respondents that the appointment of the petitioner was purely contractual, as per the terms and conditions, mentioned in his initial appointment letter dated 11.12.1996, and that his services were to stand automatically terminated when new incumbent was to join the post, on regular basis. Ld. Dy. DA further submitted that since, the selection process to the post of Instructor, was within the preview of the HP Public Service Commission, the selection of the new incumbent, namely Shri Munni Lal, on regular basis, was made by it and then his name was recommended for being appointed as an Instructor, on regular basis. Thus, there was no occasion for respondents no. 1 & 2 to have given preference to the petitioner whose appointment had purely been made on contractual basis for a period of 89 days. Further, the respondents were not required to comply with the requirements of section 25F of the Act, particularly, when, as per the terms and conditions of the appointment letter, it had been clearly mentioned that the services of the petitioner were to stand terminated on the joining of new incumbent.

12. Petitioner (PW-1) has supported all the material particulars, on oath, including that as per appointment letter Ex. P/A, he had joined the post of Instructor and continued as such till 22.9.1997, when his services were illegally terminated without notice and compensation. Before his termination, he had worked for 240 days. In order to challenge his termination, he had filed an OA no. 87/1998 before State Administrative Tribunal, which was disposed of on 11.3.2005, vide Ex. P/B. After his termination, Shri Muni Lal, was selected as regular Instructor, in his place. In the cross examination, he admitted to have been appointed on contract basis for 89 days, vide order Ex. P/A and that his appointment/engagement was as per the terms and conditions, mentioned in the appointment letter (Ex. P/A), in which, it had been clearly mentioned that his services were to stand terminated, in the event of regular recruitment, on the basis of proper selection procedure. He further admitted to have accepted the terms and conditions before reporting for the duties and submitted an agreement in the shape of an affidavit before joining as Instructor. Ex. R/A is his affidavit dated 16.12.1996, which is correct as per the original, shown to him. He further admitted that the regular selection for the post of Instructor falls within the preview of HP Public Service Commission, Shimla and that it (HPPSC) had recommended the name of respondent no.4 after following the proper selection procedure for the post of Instructor. He further admitted that after the joining of regular appointee, his services stood automatically terminated/ceased w.e.f. 22.9.1997 (afternoon), as per the terms and conditions of letter dated 11.12.1996 (Ex. P/A).

13. Shri Madan Mohan (RW-1), supported this fact that the petitioner had been engaged as Instructor on 16.12.1996 on contract basis for 89 days in the office of ITI Solan, vide appointment letter Ex. P/A. As per the said letter, the candidate was supposed to report for duty after entering into an agreement, if the terms and conditions of the appointment were accepted to him. The petitioner had joined on 16.12.1996 and submitted an affidavit Ex. R/A. Shri Muni Lal (respondent no.4) had been appointed as an Instructor by respondent no.3 and he joined the office of respondent no.2, in place of petitioner and thereafter, the services of the petitioner stood discharged/terminated, vide order Ex. RC. The petitioner had also submitted affidavits dated 24.6.1997 and 20.3.1997, which are Ex. RA-1 and Ex. RA-2. In the cross examination, he admitted that the petitioner was qualified to be engaged as Instructor and that his services had been terminated by the Principal whereas his appointment was made by the Director Technical.

14. It is not a disputed fact that initially, the petitioner had been appointed as an Instructor vide office order dated 11.12.1996, the photocopy of which is Ex. P/A, on contract basis, as per the terms and conditions mentioned therein. Ex. R/A is the affidavit of the petitioner dated 16.12.1996, whereby he had agreed to the terms and conditions, as mentioned in appointment letter dated 11.12.1996, and further undertook to abide by all the rules and regulations of the department for all intents and purposes. This clearly shows that before joining his services, as Instructor, on 16.12.1996, on contract basis, the petitioner, by filing an affidavit Ex. R/A, had accepted the terms and conditions mentioned in appointment letter Ex. R/A. As per its condition no.3, the petitioner had accepted that his engagement, as Instructor, would stand automatically ceased/terminated, on the joining of regular incumbent, on the basis of proper selection procedure, applicable in the matter. As per condition no.7, he had further accepted that he would not have any

claim or right for regularization of service. Thus, from this document Ex. P/A coupled with the affidavit Ex. R/A, it stands duly proved that the petitioner, on having accepted the terms and conditions of his appointment, as Instructor, had joined on contract basis for a period of 89 days, from 16.12.1996 to 14.3.1997. From his affidavits, Ex. RA-1 & Ex. RA-2, it is further borne out that his appointment as Instructor continued to be extended vide separate appointment letters no. 245/97 dated 17.3.1997 and no. HIV (IT) HP (4) 325/1996-14788-91 dated 23.6.1997. By filing the aforesaid affidavits, the petitioner had kept on accepting the terms and conditions, as mentioned in his appointment letters. In these circumstances, when the appointment of the petitioner, to the post of Instructor, was purely on contractual basis and that too subject to the terms and conditions, as mentioned in the appointment letters, specifically, in the initial appointment letter dated 11.12.1996, the copy of which is Ex. P/A, it cannot be said that on the joining of regular incumbent (Munni Lal), his services were terminated illegally or in an unjustified manner, in contravention of the provisions of the Act. In fact, the same stood terminated as per condition no.3 of his appointment letter, which he had accepted alongwith other terms and conditions by filing/submitting affidavit Ex. R/A. It is further to be noted that for terminating the services of the petitioner, an office order dated 22.9.1997, had been issued, the photocopy of which is Ex. RC, wherein it has been clearly mentioned that the new incumbent, appointed on regular basis, had joined his duties on 22.9.1997 (forenoon). It is true that for the petitioner, it has been argued that the services of the petitioner could not have been terminated since, he was having lien on the post but this contention fails to satisfy me particularly for the reason that the petitioner had accepted the appointment on contractual basis as per the terms and conditions mentioned in the appointment letter and further that the selection to the post of Instructor was required to be made by the HP Public Service Commission, Shimla which, on having followed the prescribed procedure, recommended the name of respondent no.4 (Munni Lal), on regular basis, for the appointment of Instructor. Thus, it is quite clear that respondent's no. 1 & 2, had no role in appointing said Muni Lal, on regular basis, to the post of Instructor. It has been rightly argued by the Dy. DA that since, the appointment of the petitioner had been on contractual basis and that too, as per the terms and conditions mentioned in the appointment letter, there was no legal necessity for respondents (no. 1 & 2) to have complied with the provisions of section 25F of the Act. Consequently, I hold that the petitioner has failed to prove that his services were terminated in an illegal and unjustified manner without complying with provisions of the Act. Thus, my answer to this issue is in "No".

Issue No.2.

15. In view of my findings on issue no.1 above, this issue becomes redundant.

Issue No.3

16. In the petition, it has been alleged that as held by the Administrative Tribunal in OA no. 871/1998, the petitioner is covered as per the definition of workman under section 2(s) of the Act. On the record, the petitioner has brought the copy of the order dated 11.3.2005, passed by Administrative Tribunal, which is Ex. P/B. As per this order, the Tribunal had disposed of OA no. 871/1998 by observing that it had no jurisdiction in the matter and that the applicant, therein, was at liberty to approach the appropriate forum. From this order, it is quite clear that the Administrative Tribunal was of the view that since, there had been an Industrial Dispute, raised by the applicant, therein, the remedy available to him, was to approach the Industrial Tribunal/Labour Court. Moreover, at the time of arguments, it could not be pressed on behalf of respondents that since, the petitioner does not fall within the definition of section 2(s) of the Act, this petition is not maintainable. Thus, having regard to the order passed by Administrative Tribunal, the copy of which is Ex. P/B, I hold that the claim of the petitioner is maintainable and accordingly, my answer to this issue is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 9th September, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla
Camp at Solan.

मुद्रण एवं लेखन सामग्री विभाग**अधिसूचना**

शिमला-2, 1 दिसम्बर, 2010

संख्या मुद्रण (बी) 2-24/97.—हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हिमाचल प्रदेश मुद्रण एवं लेखन सामग्री विभाग, में प्रैस मजदूर वर्ग-IV (अराजपत्रित) (अलिपिक वर्गीय) पद के लिए इस अधिसूचना से संलग्न उपाबन्ध “क” के अनुसार भर्ती और प्रोन्नति नियम बनाती हैं, अर्थात्:-

1. संक्षिप्त नाम और प्रारम्भ.—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश मुद्रण एवं लेखन सामग्री विभाग प्रैस मजदूर वर्ग-IV (अराजपत्रित) (अलिपिक वर्गीय) भर्ती और प्रोन्नति नियम, 2010 है ।

; (2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की जाने की तारीख से प्रवृत्त होंगे ।

2. निरसन और व्यावृत्तियां.—(i) अधिसूचना संख्या मु0 (बी) 2-16/96 तारीख 10-12-1998 द्वारा अधिसूचित हिमाचल प्रदेश मुद्रण एवं लेखन सामग्री विभाग प्रैस मजदूर वर्ग-4 (अराजपत्रित) भर्ती और प्रोन्नति नियम 1998 का एतद्वारा निरसन किया जाता है ।

(ii) ऐसे निरसन के होते हुए भी उपर्युक्त उप नियम

2 (i) के अधीन इस प्रकार निरसित नियमों के अधीन की गई कोई नियुक्ति, बात या कार्रवाई, इन नियमों के अधीन विधि मान्य रूप में की गई समझी जाएगी ।

आदेश द्वारा,
हस्ताक्षरित/—
सचिव (मुद्रण एवं लेखन) ।

उपाबन्ध—“क”

हिमाचल प्रदेश मुद्रण एवं लेखन सामग्री विभाग में प्रैस मजदूर वर्ग-IV (अराजपत्रित) के पद के लिए भर्ती और प्रोन्नति नियम

1. पद का नाम.—प्रैस मजदूर

2. पदों की संख्या.—11 (ग्यारह)

3. वर्गीकरण.—वर्ग-IV (अराजपत्रित) (अलिपिक वर्गीय)

4. वेतनमान.— (i) नियमित पदधारियों के लिए वेतनमान : पे बैंड 4900-10680 रुपये + 1300 रुपये ग्रेड पे ।

(ii) संविदा पर नियुक्त कर्मचारियों के लिए उपलब्धियां : 6200 रुपए प्रतिमास (स्तम्भ संख्या 15-क में दिए गए ब्यौरे के अनुसार) ।

5. चयन पद अथवा 'अचयन'.—अचयन पद

6. सीधी भर्ती के लिए आयु.—18 से 45 वर्ष परन्तु सीधे भर्ती किए जाने वाले व्यक्तियों के लिए ऊपरी आयु सीमा, तदर्थ या संविदा के आधार पर नियुक्त किए गए व्यक्तियों सहित, पहले से ही सरकार की सेवा में रत अभ्यर्थियों को लागू नहीं होगी :

परन्तु यह और कि यदि तदर्थ या संविदा के आधार पर नियुक्त किया गया अभ्यर्थी इस रूप में नियुक्ति की तारीख को अधिक आयु का हो गया हो, तो वह तदर्थ या संविदा के आधार पर नियुक्ति के कारण, विहित आयु में छूट के लिए पात्र नहीं होगा :

परन्तु यह और कि अनुसूचित जातियों/अनुसूचित जनजातियों/अन्य वर्गों के व्यक्तियों के लिए ऊपरी आयु सीमा में उतनी ही छूट दी जा सकेगी, जितनी हिमाचल प्रदेश सरकार के साधारण या विशेष आदेश (आदेशों) के अधीन अनुज्ञेय है :

परन्तु यह और भी कि पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों के सभी कर्मचारियों को, जो ऐसे पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों के प्रारम्भिक गठन के समय ऐसे पब्लिक सेक्टर, निगमों/स्वायत्त निकायों में आमेसन से पूर्व सरकारी कर्मचारी थे, सीधी भर्ती में आयु सीमा में ऐसी ही रियायत दी जाएगी, जैसी सरकारी कर्मचारियों को अनुज्ञेय है, किन्तु इस प्रकार की रियायत पब्लिक सेक्टर निगमों, तथा स्वायत्त निकायों के ऐसे कर्मचारिवृन्द को नहीं दी जाएगी, जो पश्चात्पूर्वी ऐसे निगमों/स्वायत्त निकायों द्वारा नियुक्त किए गए थे/किए गए हैं और उन पब्लिक सेक्टर, निगमों/स्वायत्त निकायों के प्रारम्भिक गठन के पश्चात् ऐसे निगमों/स्वायत्त निकायों की सेवा में अन्तिम रूप से आमेलित किए गए हैं/किए गए थे ।

(1) सीधी भर्ती के लिए आयु सीमा की गणना, उस वर्ष के प्रथम दिवस से की जाएगी, जिसमें पद (पदों) को यथास्थिति आवेदन आमन्त्रित करने के लिए, यथास्थिति विज्ञापित किया गया है या नियोजनालयों को अधिसूचित किया गया है ।

(2) अन्यथा सुअर्हित अभ्यर्थियों की दशा में सीधी भर्ती के लिए आयु सीमा और अनुभव हिमाचल प्रदेश लोक सेवा आयोग के विवेकानुसार शिथिल किया जा सकेगा ।

7. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अहर्ताएं.—(क) अनिवार्य अहर्ताएं.—(1) केन्द्रीय/हिमाचल प्रदेश सरकार द्वारा सम्पक रूप से मान्यता प्राप्त स्कूल शिक्षा बोर्ड/संस्थान से आठवीं पास ।

(ख) वांछनीय अहर्ताएं.—हिमाचल प्रदेश की रुढ़ियों रीतियों और बोलियों का ज्ञान और प्रदेश में विद्यमान विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता ।

8. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए विहित आयु और शैक्षिक अहर्ताएं प्रोन्नत व्यक्ति(यों) की दशा में लागू होंगी या नहीं.—आयु : लागू नहीं

शैक्षिक अहर्ता : लागू नहीं ।

9. परिवीक्षा की अवधि, यदि कोई हो.—दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए विस्तार किया जा सकेगा, जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में और लिखित कारणों से आदेश दे ।

10. भर्ती की पद्धति : भर्ती सीधी होगी या प्रोन्नति प्रतिनियुक्ति स्थानांतरण द्वारा और विभिन्न पद्धतियों द्वारा भरे जाने वाले पद (पदों) की प्रतिशतता.—यथास्थिति शतप्रतिशत सीधी भर्ती द्वारा नियमितया आधार पर या संविदा के आधार पर भर्ती द्वारा । संविदा पर नियुक्त कर्मचारी सतम्भ 15—क में दी गई अपलब्धियां प्राप्त करेंगे और उक्त स्तम्भ में विनिर्दिष्ट सेवा शर्तों द्वारा विनियमित होंगे ।

11. प्रोन्नति, प्रतिनियुक्ति स्थानांतरण की दशा में वे श्रेणियां (ग्रेड) जिनसे प्रोन्नति/प्रतिनियुक्ति या स्थानांतरण किया जाएगा.—लागू नहीं ।

12. यदि विभागीय प्रोन्नति समिति विद्यमान हो तो उसकी सरंचना.—लागू नहीं ।

13. भर्ती करने में जिन परिस्थितियों में हिमाचल प्रदेश लोक सेवा आयोग से परामर्श किया जाएगा.—जैसा विधि द्वारा अपेक्षित हो ।

14. सीधी भर्ती के लिए अनिवार्य अपेक्षा.—किसी सेवा या पद पर नियुक्ति के लिए अभ्यर्थी का भारत का नागरिक होना अनिवार्य है ।

15. सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन.—सीधी भर्ती की दशा में, पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा या यदि हिमाचल प्रदेश लोक सेवा आयोग या अन्य भर्ती अभिकरण ऐसा करना आवश्यक या समीचीन समझे तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम आदि यथास्थिति आयोग/अन्य भर्ती प्राधिकरण द्वारा अवधारित किया जाएगा ।

15-क संविदा नियुक्ति द्वारा पद पर नियुक्ति के लिए चयन.—इन नियमों में किसी बात के होते हुए भी पद पर संविदा नियुक्तियों नीचे दिए गए निबन्धनों और शर्तों के अधीन की जाएगी :—

(I) संकल्पना.—(क) इस पॉलिसी के अधीन हिमाचल प्रदेश मुद्रण एवं लेखन सामग्री विभाग में **प्रेस मजदूर** को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए लगाया जाएगा, जिसे वर्षानुवर्ष आधार पर बढ़ाया जा सकेगा ।

परन्तु वर्षानुवर्ष आधार पर संविदा की अवधि में विस्तार/नवीकरण की दशा में सम्बद्ध विभागाध्यक्ष, यह प्रमाण पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा तथा आचरण उस वर्ष के दौरान संतोषजनक रहा है केवल तभी उसकी संविदा अवधि का विस्तार/नवीकरण किया जाएगा ।

(ख) पद का हिमाचल प्रदेश लोक सेवा आयोग/हिमाचल प्रदेश अधीनस्थ चयन सेवाएं बोर्ड के कार्य क्षेत्र से बाहर आना.—नियन्त्रक मुद्रण तथा लेखन रिक्त पदों को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात् रिक्त पदों के ब्यौरे दो अग्रणी समाचार पत्रों में विज्ञापित करवाएगा, तथा इन नियमों में यथाविहित अर्हताएं और अन्य पात्रता शर्तें रखने वाले अभ्यर्थियों से आवेदन आमन्त्रित करेगा ।

(ग) चयन इन नियमों में विहित पात्रता शर्तों के अनुसार किया जाएगा ।

(II) संविदात्मक उपलब्धियां.—संविदा के आधार पर नियुक्त प्रैस मजदूर को 6200 /— रुपये की समेकित नियत संविदात्मक रकम (जो पे बैंड के न्यूनतम + ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी। संविदा में द्वितीय और तृतीय वर्ष की बढ़ौतरी की जाती है, तो पश्चात्वर्ती वर्ष (वर्षों) के लिए संविदात्मक उपलब्धियों में 190 /— रुपये की रकम (पद के पे बैंड के न्यूनतम + ग्रेड पे का तीन प्रतिशत) वार्षिक वृद्धि के रूप में अनुज्ञात की जाएगी ।

(III) (नियुक्ति/अनुशासन प्राधिकारी).—नियन्त्रक (मुद्रण एवं लेखन सामग्री), हिमाचल प्रदेश, नियुक्ति और अनुशासन प्राधिकारी होगा ।

(IV) चयन प्रक्रिया.—संविदा नियुक्ति की दशा में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा या यदि आवश्यक या समीचीन समझा जाए तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम आदि सम्बद्ध भर्ती अभिकरण अर्थात् नियन्त्रक मुद्रण एवं लेखन सामग्री द्वारा अवधारित किया जाएगा ।

(V) संविदात्मक नियुक्तियों के लिए चयन समिति.—जैसी सम्बद्ध भर्ती अभिकरण, अर्थात् नियन्त्रक मुद्रण एवं लेखन सामग्री द्वारा समय-समय पर गठित की जाए ।

(VI) करार.—अभ्यर्थी को, चयन के पश्चात् इन नियमों से संलग्न उपाबन्ध 'ख' के अनुसार करार हस्ताक्षरित करना होगा ।

(VII) निबन्धन और शर्तें.—(क) संविदा के आधार पर नियुक्त व्यक्ति को 6200 रुपये की नियत संविदात्मक रकम (जो पे बैंड के न्यूनतम + ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी। संविदा पर

नियुक्त व्यक्ति आगे बढ़ाए गए वर्ष/वर्षों के लिए संविदात्मक रकम में 190/— रुपये (पद के पे बैंड के न्यूनतम + ग्रेड पे का तीन प्रतिशत) की वृद्धि का हकदार होगा और अन्य कोई सहबद्ध प्रसुविधाएं, जैसे वरिष्ठ/चयन वेतनमान आदि नहीं दिया जाएगा ।

(ख) संविदा पर नियुक्त व्यक्ति की सेवा पूर्णतया अस्थायी आधार पर होगी यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है, तो नियुक्ति समाप्त किए जाने के लिए दायी होगी ।

(ग) संविदा पर नियुक्त व्यक्ति एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा । यह अवकाश एक वर्ष तक संचित किया जा सकेगा । संविदा पर नियुक्त व्यक्ति को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा । वह चिकित्सा प्रतिपूर्ति और एल0 टी0 सी0 इत्यादि के लिए भी हकदार नहीं होगा/होगी । केवल प्रसूति अवकाश, नियमानुसार दिया जाएगा ।

(घ) नियन्त्रक अधिकारी के अनुमोदन के बिना सेवा से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान (समापन) हो जाएगा। संविदा पर नियुक्त व्यक्ति कर्त्तव्य (ड्यूटी) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा ।

(ङ) संविदा पर नियुक्त कर्मचारी जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानांतरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो ।

(च) चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण-पत्र प्रस्तुत करना होगा। बारह सप्ताह से अधिक की गर्भवती महिला अभ्यर्थी प्रसव होने तक, अस्थायी तौर पर अनुपयुक्त बनी रहेगी । महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा ।

(छ) संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्त्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी नियमित कर्मचारियों को वेतनमान के न्यूनतम पर लागू हैं, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी ।

(ज) नियमित कर्मचारियों की दशा में यथालागू सेवा नियमों के उपाबन्ध, जैसे एफ0 आर0, एस0 आर0, छुट्टी नियम, साधारण भविष्य निधी नियम, पेंशन नियम तथा आचरण नियम आदि संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होंगे। वे इस सतम्भ में यथावर्णित उपलब्धियों आदि के लिए हकदार होंगे ।

16. आरक्षण.—सेवा में नियुक्ति, हिमाचल प्रदेश सरकार द्वारा, समय-समय पर अनसूचित जातियों/अनसूचित जनजातियों/अन्य पिछड़े वर्गों अन्य प्रवर्ग के व्यक्तियों के लिए सेवा में आरक्षण की बावत जारी किए गए आदेशों के, अधीन होगी ।

17. विभागीय परीक्षा.—लागू नहीं ।

18. शिथिल करने की शक्ति.—जहां राज्य सरकार की यह राय हो कि ऐसा करना शक्ति आवश्यक या समीचीन है, वहां वह कारणों को लिखित में अभिलिखित करके आदेश द्वारा, इन नियमों के किन्हीं उपबन्ध (उपबन्धों) को किसी वर्ग या व्यक्ति(यों) के प्रवर्ग या पद (पदों) की बावत, शिथिल कर सकेगी ।

उपाबन्ध 'ख'

प्रेस मजदूर और हिमाचल प्रदेश सरकार के मध्य, नियन्त्रक मुद्रण एवं लेखन सामग्री विभाग हिमाचल प्रदेश के माध्यम से निष्पादित की जाने वाली संविदा/करार का प्ररूप

यह करार श्री/श्रीमती..... पुत्र/पुत्री श्री.....
निवासी....., संविदा पर नियुक्त व्यक्ति (जिसे इसमें इसके पश्चात् 'प्रथम पक्षकार' कहा गया है, और हिमाचल प्रदेश की राज्यपाल, के मध्य नियन्त्रक, मुद्रण एवं लेखन सामग्री विभाग,

हिमाचल प्रदेश, (जिसे इसमें इसके पश्चात् 'द्वितीय पक्षकार' कहा गया है) के माध्यम से आज तारीख..... को किया गया।

'द्वितीय पक्षकार' ने उपरोक्त प्रथम पक्षकार को लगाया है और प्रथम पक्षकार ने प्रैस मजदूर के रूप में संविदा के आधार पर निम्नलिखित निबन्धन और शर्तों पर सेवा करने के लिए सहमति दी है:-

1. यह कि प्रथम पक्षकार प्रैस मजदूर के रूप में से प्रारम्भ होने और..... को समाप्त होने वाले दिन तक, एक वर्ष की अवधि के लिए द्वितीय पक्षकार की सेवा में रहेगा। यह विनिर्दिष्ट रूप से उल्लिखित किया गया है और दोनों पक्षकारों द्वारा करार पाया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा, आखिरी कार्य दिवस को अर्थात्..... दिन को स्वयं मेव ही समाप्त (पर्यवसित) समझी जाएगी और सूचना नोटिस आवश्यक नहीं होगा।

परन्तु वर्षानुवर्ष आधार पर संविदा अवधि में बिस्तार/नवीकरण के लिए सम्बद्ध विभागाध्यक्ष, यह प्रमाण पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा तथा आचरण उस वर्ष के दौरान संतोषजनक रहा है और केवल तभी उसकी संविदा अवधि की बिस्तारण/नवीकरण किया जाएगा।

2. प्रथम पक्षकार की संविदात्मक रकम 6200 रुपए प्रतिमास होगी।
3. प्रथम पक्षकार की सेवा पूर्णतया अस्थाई आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है या यदि नियमित पदधारी उस रिक्ति के विरुद्ध नियुक्त/तैनात कर दिया जाता है, जिसके लिए प्रथम पक्षकार को लगाया गया है, तो नियुक्ति समाप्त (पर्यवसित) की जाने के लिए दायी होगी।
4. संविदात्मक प्रैस मजदूर एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा। यह अवकाश एक वर्ष तक संचित किया जा सकेगा। संविदा पर नियुक्त प्रैस मजदूर को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए भी हकदार नहीं होगा/होगी। केवल प्रसूति अवकाश नियमानुसार दिया जाएगा।
5. नियन्त्रक अधिकारी के अनुमोदन के बिना कर्तव्यों से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का समापन (पर्यावसान) हो जाएगा। संविदा तक प्रैस मजदूर कर्तव्य (डियूटी) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा।
6. संविदा अधार पर नियुक्त कर्मचारी जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है आवश्यकता के आधार पर स्थानांतरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो।
7. चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण-पत्र प्रस्तुत करना होगा। महिला अभ्यर्थियों की दशा में बारह सप्ताह से अधिक की गर्भावस्था प्रसव होने तक, उसे अस्थाई तौर पर अनुपयुक्त बना देगी। महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाना चाहिए।
8. संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौर' पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी नियमित प्रतिस्थानी कर्मचारी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा।
9. संविदा पर नियुक्त व्यक्ति(यों) को कर्मचारी सामूहिक बीमा योजना के साथ-साथ इ0पी0एफ0/जी0पी0एफ0 भी लागू नहीं होगा।

इसके साक्ष्यस्वरूप प्रथम पक्षकार और द्वितीय पक्षकार ने साक्षियों की उपस्थिति में इसमें सर्वप्रथम उल्लिखित तारीख को अपने अपने हस्ताक्षर कर दिए हैं ।

साक्षियों की उपस्थिति में:—

1.

.....

.....

(नाम व पूरा पता)

2.

.....

.....

(नाम व पूरा पता)

(प्रथम पक्षकार के हस्ताक्षर)

साक्षियों की उपस्थिति में:—

1.

.....

.....

(नाम व पूरा पता)

2.

.....

.....

(नाम व पूरा पता)

(द्वितीय पक्षकार के हस्ताक्षर)

[Authoritative English Text of this department Notification No: Mudran (B)2-24/97 dated 1-12-2010 as required under clause (3) of Article 348 of the Constitution of India.]

DEPARTMENT OF PRINTING AND STATIONERY

NOTIFICATION

Shimla-2, the 1st December, 2010

No. Mudran (B)2-24/97.—In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, is pleased to make the Recruitment & Promotion Rules for the post of **Press Mazdoor**, Class-IV (Non-Gazetted), (Non-Ministerial) in the Department of Printing and Stationery, Himachal Pradesh as per Annexure-A attached to this Notification namely :—

1. Short title and commencement.—(i) These Rules may be called the Himachal Pradesh Printing and Stationery Department, Press Mazdoor Class-IV (Non-Gazetted), (Non-Ministerial) Recruitment and Promotion Rules, 2010.

(ii) These Rules shall come into force from the date of publication in the Rajpatra H.P.

2. Repeal and Savings.—(i) The Himachal Pradesh Printing and Stationery Department, Press Mazdoor Class-IV (Non-Gazetted), (Non Ministerial) Recruitment and Promotion Rules, 1998 notified *vide* Notification No: Mud (B)2 - 16/96 dated 10-12-1998 are hereby repealed.

(ii) Notwithstanding such repeal, any appointment made or anything done or any action taken under Sub- Rule-2(1) supra shall be deemed to have been validly made or done or taken under these Rules.

By order,
Sd/-
Secretary (Printing and Stationery).

Annexure-"A"

RECRUITMENT AND PROMOTION RULES FOR THE POST OF PRESS MAZDOOR CLASS-IV (NON-GAZETTED), IN THE DEPARTMENT OF PRINTING AND STATIONERY HIMACHAL PRADESH

1. **Name of the Post.**—Press Mazdoor
2. **Number of Post(s).**—11(Eleven)
3. **Classification.**—Class-IV (Non-Gazetted) (Non–Ministerial)
4. **Scale of Pay.**—(i) Pay Scale for regular incumbents: Rs. 4900-10680 +1300 Grade Pay.
(ii)Emoluments for contract employees : Rs. 6200 P.M. (As detailed in Col. No.15-A).
5. **Whether “Selection”post or “Non-Selection” post :** Non-Selection
6. **Age for direct recruitment :** Between 18 and 45 years.

Provided that that upper age limit for direct recruits will not be applicable to the candidates already in service of the Government including those who have been appointed on adhoc or on contract basis.

Provided further that if a candidate appointed on adhoc basis or on contract basis had become over-age on the date he/she was appointed as such he/she shall not be eligible for any relaxation in the prescribed age-limit by virtue of his/her such adhoc or contract appointment.

Provided further that upper age-limit is relax able for Scheduled Castes/Scheduled Tribes/Other categories of persons to the extent permissible under the general or special order(s) of the Himachal Pradesh Government.

Provided further that the employees of all the Public Sector Corporations and Autonomous Bodies who happened to be Government Servants before absorption in Public Sector Corporation /Autonomous Bodies at the time of initial of such constitutions of such Corporations/Autonomous Bodies shall be allowed age concession in direct recruitment as admissible to Government Servants.This concession will not, however, be admissible to such staff of the Public Sector Corporations/Autonomous Bodies and who are/were finally absorbed in the service of such Corporations/Autonomous Bodies after initial constitution of the Public Sector Corporations/Autonomous Bodies.

(1) Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) is/are advertised for inviting application or notified to the Employment Exchanges or as the case may be.

(2) Age and experience in the case of direct recruitment ,relax able at the discretion of the Himachal Pradesh Public Service Commission in case the candidate is otherwise well qualified.

7. Minimum educational and other qualifications required for direct recruits(s).—
Essential Qualification(s) : (i) Middle Pass from a Board of School Education/Institute duly recognized by the H.P./Central Govt.

Desirable Qualification(s) : Knowledge of customs, manners and dialects of Himachal Pradesh and Suitability for appointment in the peculiar conditions prevailing in the Pradesh.

8. Whether age and educational qualification(s) prescribed for direct recruit(s) will apply in the case of the promotee(s) Age : Not applicable.

Educational Qualification : Not applicable.

9. Period of probation, if any.—Two years, subject to such further extension for a period not exceeding one years as may be ordered by the competent authority in special circumstances and reasons to be recorded in writing.

10. Method(s) of recruitment.—*Whether by direct recruitment or by promotion, deputation, transfer and the percentage of posts to be filled in by various methods.*—100% by direct recruitment on a regular basis or by recruitment on contract basis as the case may be. The contract employees will get emoluments as given in Col. No: 15 –A and will be governed by service conditions as specified in the said column.

11. In case of recruitment by promotion, deputation, transfer grade from which promotion/deputation/transfer is to be made.—Not applicable.

12. If a Departmental Promotion Committee exists, what is its composition?—Not applicable.

13. Circumstances under which the Himachal Pradesh Public Service Commission is to be consulted in making recruitment.—As required under the Law.

14. Essential requirement for a direct recruitment.—A candidate for appointment to any service or post must be a citizen of India.

15. Selection for appointment to post by direct recruitment.—Selection for appointment to the post in the case of direct recruitment shall be made on the basis on *viva-voce* test of the Himachal Pradesh Public Service Commission or other recruiting authority, as the case may be ,consider necessary or expedient by a written test or practical test, the standard/syllabus etc. of which will be determined by the Commission/other recruiting authority, as the case may be.

15-A (Selection for appointment to the post by contract appointment).—Not withstanding anything contained in these rules, contract appointments to the post will be made subject to the terms and conditions given below:—

(I) CONCEPT.—(a) Under this policy, the Press Mazdoor in the Printing & Stationery Department will be engaged on contract basis initially for one year, which may be extendable, on year to year basis Provided that for extension /renewal of contract period on year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only then his period of contract is to be renewed.

(b) **POST FALLS OUT OF THE PURVIEW OFHPPSC/HPSSSB.**—The Controller, Printing & Stationery Department, after obtaining the approval of the Government to fill up the vacant post on contract basis will advertise the details of the vacant posts in at least two leading newspapers and invite applications from candidates having the prescribed qualifications and fulfilling the other eligibility conditions as prescribed in these Rules.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these Rules.

(II) CONTRACTUAL EMOLUMENTS.—The **Press Mazdoor** appointed on contract basis will be paid consolidated fixed contractual amount @ Rs. 6200 per month (which shall be equal to the minimum of the pay band + Grade Pay.) An amount of Rs. 190/-(3% of minimum of the pay band + Grade Pay) as increase in contractual amount for subsequent years will be allowed if the contract is extended beyond one year.

(III) APPOINTING /DISCIPLINARY AUTHORITY.—The Controller, Printing and Stationery Himachal Pradesh will be appointing and disciplinary authority.

(IV) SELECTION PROCESS.—Selection for appointment to the post in case of contract appointment will be made on the basis of *Viva-voce* test or if considered necessary or expedient by a written test or practical test the standard/syllabus etc. of which will be determined by the concerned recruiting agency *i.e.* Controller Printing and Stationery.

(V) COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTEE.—As may be constituted by the concerned recruiting agency *i.e.* Controller Printing and Stationery H.P time to time.

(VI) (AGREEMENT).—After selection of a candidate ,he /She shall sign an agreement as per annexure -B appended to these Rules.

(VII) TERMS AND CONDITIONS.—(a) The Contract appointee will be paid fixed contractual amount @ Rs.6200/- per month (which shall be equal to minimum of pay band + Grade Pay). An amount of Rs. 190 (3% of minimum of pay band + GradePay)as annual increase in the contractual amount for the subsequent years and no other allied benefit such as senior/selection scales etc. shall be given.

(b) The service of the contract appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance / conduct of the contract appointee is not found satisfactory.

(c) Contract appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated up to one year. No leave of any other kind will be admissible to the contractual appointee. He/She will not be entitled for Medical Re-imbursement and LTC etc. only maternity leave will be given as per rules.

(d) Unauthorized absence from the duty without the approval of the Controlling officer shall automatically lead to the termination of the Contract .The Contract appointee shall not be entitled for contractual amount for period of absence from duty.

(e) An official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need basis whenever required on administrative grounds.

(f) Selected candidate will have to submit a Certificate of his/her fitness from a Government/Registered Medical Practitioner Women candidate pregnant beyond 12 weeks will be

temporarily unfit till the Confinement is over. The women candidate will be re-examined for the fitness from an authorized Medical Officer/Practitioner.

(g) Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his official duties at the same rate as applicable to regular counter part officials at the minimum of pay scales.

(h) Provisions of service rules like FR,SR, Leave Rules, GPF Rules, Pension Rules and Conduct Rules etc.as are applicable in case of regular employees will not be applicable in case of contract appointee. They will be entitled for emoluments etc. as detailed in this column.

16. Reservation.—The appointment to the service shall be subject to orders regarding reservation in the service for Scheduled Castes/Scheduled Tribes/Other Backward Classes/Other categories of persons issued by Himachal Pradesh Government from time to time.

17. Departmental Examination.—Not applicable.

18. Powers to relax.—Where the State Government is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing relax any of the provision(s) of these Rules with respect to any Class or Category of person(s) or post(s).

Annexure-“B”

Form of contract/agreement to be executed between the Press Mazdoor & the Government of Himachal Pradesh through—Controller Printing and Stationery H.P.

This agreement is made on this.....day of..... in the year.....Between.....Sh/Smt.....S/o/D/o Shri.....R/o.....

Contract appointee (hereinafter called the FIRST PARTY), AND The Governor, Himachal Pradesh through Controller, Printing and Stationery Department, Himachal Pradesh (hereinafter called the SECOND PARTY) Whereas, the SECOND PARTY has engaged the aforesaid FIRST PARTY, and the FIRST PARTY has agreed to serve as Press Mazdoor on contract basis on the following terms and conditions:—

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as a Press Mazdoor for a period of one year commencing on day of ----- and ending on the day of ----- It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall ipso-facto stand terminated on the last working day *i.e.* on ----- And information notice shall not be necessary.

Provided that for extension/renewal of contract period on year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only then his period of contact is to be renewed/extended.

2. The Contractual amount of the FIRST PARTY will be **Rs. 6200** /- per month.

3. The service of FIRST PARTY will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good. Or if regular incumbent is appointed/posted against the vacancy for which the first party was engaged on contract.
4. Contractual Press Mazdoor will be entitled for one day casual leave after putting one month service. This leave can be accumulated upto one year. No leave of any other kind is admissible to the contractual Press Mazdoor . He will not be entitled for Medical Reimbursement and LTC etc. Only maternity leave will be given as per Rules.
5. Unauthorized absences from the duty without the approval of the controlling officer shall automatically lead to the termination of the contract. A contractual Press Mazdoor will not be entitled for contractual amount for the period of absence from duty.
6. An official appointed on contract basis who has completed five years tenure at one place of posting will be eligible for transfer on need based basis whenever required on administrative grounds.
7. Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner. In case of women candidates pregnancy beyond twelve weeks will render her temporary unfit till the confinement is over. The women candidate should be re-examined for fitness from an authorized Medical Officer/Practitioner.
8. Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his official duties at the same rate as applicable to regular counter part official.
9. The Employees Group Insurance Scheme as well as EPF/GPF will not be applicable to the contractual appointee(s).

IN WITNESS the FIRST PARTY AND SECOND PARTY have herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESS:

1.
.....
.....
(Name and full Address)

(Signature of the FIRST PARTY)

2.
.....
.....
(Name and full Address)

IN THE PRESENCE OF WITNESS:

1.
.....
.....
(Name and full Address)

(Signature of the SECOND PARTY)

2.
.....
.....
(Name and full Address)